



## METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

February 7, 2019

Dr. Shawn Joseph  
Metro Nashville Public Schools  
Director

Dear Dr. Joseph,

### METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

#### Sources of Allegations

The Metropolitan Nashville Office of Internal Audit began receiving allegations about Metropolitan Nashville Public Schools' purchasing activities in March 2018. The allegations were made through telephone calls, the Metro Nashville Fraud Waste or Abuse Hotline, and interviews.

#### Purpose of Investigation

The Metropolitan Nashville Office of Internal Audit conducts internal investigations of potential violation of governance policies established for the Metropolitan Nashville Government or investigations of potential fraud, waste, and abuse. Investigation requests are received from the management of the Metropolitan Nashville Government or tips received from the Metropolitan Nashville Government fraud, waste, and abuse hotline.

Any findings or observations of potential fraud and other criminal acts would be referred to the 20th Judicial District Attorney Office, Metropolitan Nashville Police Department, or other appropriate agency. Any findings related to employee misconduct, waste, abuse; as well as process inefficiencies and deficient internal controls would be forwarded to the management of the Metropolitan Nashville Government for corrective action.

We conduct investigations and create reports using the Standards of the Association of Certified Fraud Examiners as a guide. The standard of "preponderance of the evidence" is used as a basis for substantiating or not substantiating an allegation. Key definitions used during investigations include:

- Preponderance of Evidence – A certain set of facts "more likely than not" occurred.
- Substantiated – The preponderance of the evidence collected during the investigation indicates that the incident occurred.

February 7, 2019

## METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

Page 2

- Unsubstantiated - The evidence collected during the investigation indicates there was not a preponderance of the evidence to support the allegation or that the evidence collected during the investigation was conflicting or inconclusive.

The Metropolitan Nashville Office of Internal Audit discovery of evidence is primarily from Metropolitan Nashville Government's personnel testimonial statements, financial and operations records, and information assets (computers, email, mobile phone, and so forth). Personal private information assets and financial and operations records will be reviewed when voluntarily provided by parties involved in an investigation or contractual audit clauses facilitate such reviews.

The purpose of this investigation is to determine if there were any matters of improper use of public resources by Metropolitan Nashville Public Schools that would require management action or referred to other appropriate agencies.

### **Background**

This report regards the documentation of the compliance or noncompliance with particular purchasing policies, federal regulations, and state law, within the context of the allegations that were made. The new management team, assembled by Dr. Shawn Joseph, Director of Schools, July 2016, immediately began to increase the use of vendors for professional development to pursue a new direction in literacy, in an attempt to improve student achievement. This report does NOT evaluate the new trend in literacy, student achievement, methods, or specific products chosen to improve literacy.

Generally, the allegations are the new management team was circumventing purchasing procedures and sometimes federal regulations, and sometimes duplicating services that were already provided, because they were receiving kickback payments from vendors. There were allegations that certain vendors were unqualified. Many of the vendors had more than one allegation, and most allegations pertained to more than one vendor. Unethical activity was suspected with the Educational Research Development Institute and Educational Research Development Institute partner companies. Educational Research Development Institute's business is to test educational products and provide feedback. Dr. Monique Felder, Chief Academic Officer, had disclosed a small amount of fees received from Educational Research Development Institute.

Sometimes the allegations arose from a lack of understanding of policies and laws. Also, the requirements of policies and regulations were not always clearly understood. Some allegations stemmed from differences of opinions on the new direction in literacy and methods to achieve it. Sometimes amounts rumored to have been paid on specific contracts have been inaccurate or unclear because there is no systematic, reliable method to separately identify expenditures for individual contracts and scopes of work within the same contract because of existing computer system limitations. Some allegations arose because knowledge of cooperative (piggybacking) contracting practices was not understood.

### **Summary and Outcome of Investigation**

After performing an investigation of the allegations, and using the preponderance of evidence standard as a basis, the Office of Internal Audit believes:

February 7, 2019

METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

Page 3

**Allegation A**

The allegation that consultant Bruce Taylor is not qualified and lacks credentials or qualifications is **unsubstantiated**.

**Allegation B**

The allegation that Metropolitan Nashville Public Schools has paid Northwest Evaluation Association \$963,904, which exceeds the contract value of \$911,000, is **substantiated**.

**Allegation C**

The allegation that Metropolitan Nashville Public Schools was recognized nationally for their climate survey they had worked on with Vanderbilt but Metropolitan Nashville Public Schools paid Panorama for the same climate survey is **unsubstantiated**.

**Allegation D**

The allegation that Dr. Shawn Joseph, Director of Schools, being a member of Learning Forward's board of trustees is a conflict of interest between Metropolitan Nashville Public Schools and its participation with Learning Forward is **unsubstantiated**.

**Allegation E**

The allegation that Sharon Fogler is part of the Hemphill Educational Consultant (Sharon Hemphill) or that Metropolitan Nashville Public Schools split the services between these two vendors to avoid bringing a \$100,000 contract to the Metropolitan Nashville Board of Public Education for approval is **unsubstantiated**

**Allegation F**

1. The allegation the Edgenuity no-bid contract award failed to comply with Metropolitan Nashville Public Schools procurement procedures is **unsubstantiated**.
2. The allegation that Edgenuity consultants duplicates work that employees using existing Metropolitan Nashville Public Schools courses and resources could do is **unsubstantiated**.

**Allegation G**

The allegation the no-bid (sole source) contract award to the Educational Research Development Institute partner company, Amplify, did not comply with Metropolitan Nashville Public Schools procurement policy is **unsubstantiated**.

**Allegation H**

The allegation Metropolitan Nashville Public Schools employees, including Dr. Shawn Joseph, Dr. Sito Narcisse, and wife Maritza Gonzales, and others on the management team, have received undisclosed consulting fees from Educational Research Development Institute partner companies is **unsubstantiated**.

February 7, 2019

METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

Page 4

**Allegation I**

The allegation Achievement Network was excessively billing Metropolitan Nashville Public Schools to reach the maximum amount of the contract, and the purchasing process was not followed for awarding this contract is **unsubstantiated**.

**Allegation J**

The allegations that Read America/Read Worldwide is managed or owned by one individual, Ebony Andrews-Hill, managed from her home and Metropolitan Nashville Public Schools is the company's only source of income and may not exist is **unsubstantiated**.

**Allegation K**

The allegation that the 17-6 Request-for-Proposal process was manipulated to award the contract to Discovery Education specifically and that the cost of services from Discovery Education is "somewhere around ten times the cost of competitor services" is **unsubstantiated**.

**Allegation L**

The allegation that Research for Better Teaching services are split between departments; there is a separate contract providing the same service; the same vendor has multiple contracts; someone is getting a kickback; the contract was split into three agreements (one for \$50, another for \$50,000 and another for \$12,000) to circumvent the \$100,000 board approval requirement is **unsubstantiated**.

There was more than one scope of work for Research for Better Teaching. One scope of work was less than \$100,000. If that scope of work had been drafted into a contract before the work was performed, the contract would not have been subject to Metropolitan Nashville Board of Public Education approval. However, the amount paid exceeds the \$25,000 per Contracts Policy FM 2.113 Revision November 2016, and there should have been a contract in place before spending the funds.

**Allegation M**

1. The allegation that Metropolitan Nashville Public Schools paid extra inappropriate expenditures for Moreno Carrasco, a (former) management member when the new administration came in July 2016, paid them for an extended period of time with federal funds, and for "trendy air b&b's" with high costs is **unsubstantiated**.
2. The allegation Metropolitan Nashville Public Schools paid extended temporary housing for other employees, and used federal funds is **unsubstantiated**.

**Allegation N**

The allegation that Metropolitan Nashville Public Schools was preparing to execute a contract with Scholastic as a result of accepting a trip to a conference on Amelia Island, paid by Scholastic was **unsubstantiated**.

**Allegations O**

1. The allegation that the Performance Matters contract is for a data warehouse, even though Metropolitan Nashville Public Schools already had an excellent one is **unsubstantiated**.

February 7, 2019

METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

Page 5

2. The allegation that the Metropolitan Nashville Board of Public Education approved a summary of contracts with Performance Matters for \$1.1 million, but the actual contracts filed with the Metro Clerk's office indicates \$1.8 million between the two contracts is **substantiated**. However, this error does NOT appear to have been intentional. The \$698,653 amount paid to Performance Matters for services between December 2016 and June 2018 was less than the \$1.1 million approved by the Metropolitan Nashville Board of Public Education.

**Recommendation for management of the Metropolitan Nashville Public Schools to:**

1. Use the more stringent policy between Metropolitan Nashville Public Schools procurement policy or the federal *Uniform Grant Guidance 200.320* for purchases with federal funds. "*Uniform Grant Guidance 200.320 Methods of Procurement to Be Followed*" requires different methods based on threshold amounts. As of November 2016, the Metropolitan Nashville Public Schools' purchasing policy did not allow exclusions from competition.
2. Document the process of determining the "recognized competence and integrity" when nonfederal funds are used. *Tennessee Code Annotated § 12-3-1209* allows entities to choose educational consultants on the basis of "recognized competence and integrity."
3. Implement a consistent, reliable method to track expenditures per contract and scope of work to ensure contract limits and procurement policies are followed. Existing computer system limitations should be resolved with the planned iProcurement and Oracle Enterprise Business System implementation scheduled for July 2019.

Work for this request is closed. Please contact me should you have any further questions concerning this matter.

Sincerely,



Mark S. Swann

Enclosures

cc: Honorable Mayor David Briley  
Metropolitan Nashville Board of Public Education  
Metropolitan Nashville Audit Committee  
Jon Cooper, Director, Department of Law  
Theresa Costonis, Attorney, Department of Law



**Date** February 7, 2019

**To** Mark Swann, Metropolitan Auditor

**From** Mary Cole, Investigator

## METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION

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Generally, the allegations are the new management team was circumventing purchasing procedures and sometimes federal regulations, and sometimes duplicating services that were already provided, because they were receiving kickback payments from vendors. There were allegations that certain vendors were unqualified. Many of the vendors had more than one allegation, and most allegations pertained to more than one vendor. Unethical activity was suspected with the Educational Research Development Institute and Educational Research Development Institute partner companies. Educational Research Development Institute's business is to test educational products and provide feedback. Dr. Monique Felder, Chief Academic Officer, had disclosed a small amount of fees received from Educational Research Development Institute.

Sometimes the allegations arose from a lack of understanding of policies and laws. Also, the requirements of policies and regulations were not always clearly understood. Some allegations stemmed from differences of opinions on the new direction in literacy and methods to achieve it. Sometimes amounts rumored to have been paid on specific contracts have been inaccurate or unclear because there is no systematic, reliable method to separately identify expenditures for individual contracts and scopes of work within the same contract because of existing computer system limitations. Some allegations arose because knowledge of cooperative (piggybacking) contracting practices was not understood.

February 7, 2019

Page 2

#### Prior Office Policies vs. Board Policies

*This review included the prior policies that were, at the beginning of this project, listed publicly on its website as current policies, and had also been provided for multiple previous engagements within the past year. Metropolitan Nashville Public Schools was following its policies that were publicly listed on its website as policies, but these policies were not the same as the board policies that were being revised. The policies that the board had been revising were separate policies. Those board policies that were later approved beginning January 2018 were not used in this review.*

#### Management's Perspective

Dr. Monique Felder, Chief Academic Officer, stated that their plan to improve and accelerate student achievement required a renewed, urgent focus on literacy. This renewed and urgent focus centered on the "shifts" in literacy (i.e., Three Literacy Core Actions - Text, Talk, Tasks) that are reflected in the Tennessee state standards. While the Tennessee state standards have been rigorous and existed for many years, they were not being implemented well in the district until recently. Teachers, principals, Literacy Teacher Development Specialists, and office staff who support schools needed extensive training in the Three Literacy Core Actions. Dr. Felder stated that the office staff was not sufficient for a district of its size [per the best practices by the Council of Great City Schools] and could not lead this work when first implemented because it was new to them. The district office staff were on the same learning curve as the teachers, Literacy Teacher Development Specialists, and principals. Dr. Joseph's new administration perceived a need to act as quickly as possible. Student achievement data indicated the great need to accelerate student achievement in literacy; the school year was ready to begin; the time and, the opportunity for building staff's capacity (i.e., PreK-12 teachers, principals, and office staff) in order to impact students' achievement in literacy positively was limited per the district's school calendar. The new administration worked deliberately and expediently to access the resources needed to build the staff's capacity to improve literacy achievement in the district.

#### **Policies, Law, Guidance**

Listed below are the primary policies, law, and guidance that were reviewed. See Appendix B.

#### Metropolitan Nashville Public Schools' Prior Policies (See Appendix B.)

FM2.111 Purchasing Policy Revision, November 2016

FM2.112 Purchasing Card Program Revision, May 2014

FM2.113 Contracts Policy November 22, 2016, Revision, November 2016

FM2.113a Initiating Contracts Conflict of Interest Statement Revision, November 2009

FMp 2.129 Contracts Procedure November 22, 2016

HC 5.110 Ethics, Conflicts of Interest and Acceptance of Gifts Updated June 2015

#### Tennessee Code Annotated § 12-3-1203 – Purchases for other local governmental units.

(a) Any municipality, county, utility district, or other local governmental unit of the state may, upon request, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local governmental unit.

(1) The purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity.

(2) The cost of the purchase shall be borne by the local government for which the purchase was made.

(3) Where the local government making the request is required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)

(1) Any local education agency (LEA) may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee.

(2)

(A) Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.

(B) Any LEA which purchases equipment under this subsection (b) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the LEA which originated the contract. The originating LEA shall have no liability or responsibility for any purchases made by another LEA under a contract which the originating LEA negotiated and consummated.

(c)

(1) Any municipality, county, utility district, or other local governmental unit of this state may purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any other local governmental unit of this state. Such purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity. Any local governmental unit that purchases supplies, goods, equipment, or services under this section shall directly handle payment, refunds, returns, and any other communication or requirements involved in the purchase without involving the local governmental unit that originated the contract. The originating local governmental unit shall have no liability or responsibility for any purchases made by another local governmental unit under a contract that the originating local governmental unit negotiated and consummated. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local governmental unit may, notwithstanding the local or private act, charter, or general law, purchase without public advertisement or competitive bidding in accordance with this section.

(2) This subsection (c) shall not apply to:

(A) Purchases of new or unused motor vehicles, unless the motor vehicles are manufactured for a special purpose as defined in § 12-3-1208; and

(B) Purchases related to any transportation infrastructure project, including, but not limited to, projects for the construction or improvement of streets, highways, bridges, tunnels, or any roadway related facility.

Tennessee Code Annotated § 12-3-1205 – Cooperative purchasing agreements.

(a) Any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any

supplies, services, or construction with one or more other local governments in accordance with an agreement entered into between the participants.

(b)(1) Notwithstanding any other law to the contrary, any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services, or equipment with one (1) or more other governmental entities outside this state, to the extent the laws of the other state permit the joint exercise of purchasing authority, or with an agency of the United States, to the extent federal law permits the joint exercise of purchasing authority, in accordance with an agreement entered into between or among the participants; provided, such goods, supplies, services, or equipment were procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.

*Tennessee Code Annotated § 12-3-1209 (a) Requirements of professional persons or groups*

Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive solicitations, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive soliciting in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities.

*Code of Federal Regulations (CFR) Title 2 Grants and Agreements*

*2 CFR "Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"*

200.88 Simplified Acquisition Threshold

200.318 General Procurement Standards

200.319 Competition

200.320 Methods of Procurement to Be Followed

### **Allegation A**

Consultant Bruce Taylor is not qualified and lacks credentials or qualifications. He has no background in education.

#### **Bruce Taylor Contracts**

2-265207-00; August 1, 2016 – June 30, 2017; not to exceed \$25,000

2-265207-01; July 1, 2017-June 30, 2018; not to exceed \$80,000

#### **Facts**

1. Bruce Taylor trains on the common core standards and how to implement them. He has an extensive background in arts education. He has written books on implementing the common core standards.
2. All Bruce Taylor invoices except one were paid with federal funds.
3. The first contract was not filed with the Metropolitan Nashville Clerk until March 27, 2017, with a retroactive start date August 1, 2016.
4. Metropolitan Nashville Public Schools' Purchasing Policy FM 2.111, revised November 2016, exempts professional services provided by individuals from a competitive award, "except in the case where federal funds are to be used for the purchase." Federal funds were used on both contracts. Therefore, the contracts were not exempt from competitive award per Policy FM 2.111.
5. In addition, the Code of Federal Regulations, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 200.320(b), Procurement by small purchase procedures applies to contracts over \$3,500 but less than \$150,000. This requirement is that "price or rate quotations must be obtained from an adequate number of qualified sources."

#### **Discussion and Analysis**

Bruce Taylor has a background in arts education and is an author of published books on implementing the common core standards. However, the federal purchasing procedures should have been considered.

#### **Conclusion**

The allegation that consultant Bruce Taylor is not qualified and lacks credentials or qualifications is **unsubstantiated**.

### **Allegation B**

Metropolitan Nashville Public Schools payments to Northwest Evaluation Association exceeds the contract value.

#### **Northwest Evaluation Association Contracts**

2-00269-02; November 30, 2016 – June 30, 2019; not to exceed \$451,000

2-00269-02A1; increases compensation by \$460,000, to total not to exceed \$911,000

#### **Facts**

1. Northwest Evaluation Association is a no-bid cooperative (piggybacked) contract from Shelby County, Tennessee.
2. Metropolitan Nashville Public Schools Purchasing Policy, FM 2.111, as of November 2016, states contracts issued by another Tennessee municipality or local education agency may be used as a source of purchases.

Cooperative (piggybacking) contracting is a method of interlocal purchasing. Tennessee Code Annotated 12-3-1203 (b) allows other local education agency to purchase equipment under the same terms of a legal bid initiated by any other local education agency in Tennessee, and Tennessee Code Annotated 12-3-1203 (c) allows other local government units to purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any local government unit of Tennessee.

3. Metropolitan Nashville Public Schools had used Northwest Evaluation Association for assessments, and individual schools could pay with their funds. The new administration gave a directive for schools to use the Northwest Evaluation Association because it was better to have a single nationally normed assessment tool to have consistent test results across the district.
4. Based on invoice dates after the contract start date, there were \$964,037 in payments to Northwest Evaluation Association between February 1, 2017, and August 23, 2018. The contract amount did not include all of the assessments that the schools were directed to use.

#### **Discussion and Analysis**

Expenditures did increase. The Northwest Evaluation Association tests included separate licenses for Math and Reading. Initially, only the Reading portion was included in the contract not-to-exceed amount. Individual schools were able to purchase the Math assessment using their local funds. Those amounts would have been purchases beyond the contract scope.

#### **Conclusion**

The allegation that Metropolitan Nashville Public Schools has paid Northwest Evaluation Association \$963,904, which exceeds the contract value of \$911,000, is **substantiated**.

### **Allegation C**

Metropolitan Nashville Public Schools was recognized nationally for their climate survey they had worked on with Vanderbilt, but Metropolitan Nashville Public Schools paid Panorama for the same climate survey.

### **Panorama Contracts**

2-286109-00; March 1, 2017 – February 28, 2022; not to exceed \$89,000 throughout the contract; RFP 17-8; online survey system for students, parents, teachers, and staff

2-286109-00-A1 to increase compensation, \$356,000 additional funding obligated; total compensation not to exceed \$445,000

### **Facts**

1. Dr. Christine Stenson, Director of Research, Assessments, and Evaluation, provided examples of the differences among the different surveys:
  - a. The MyStudent survey was not used after hearing in teacher focus groups that they did not find classroom-levels measures to be valid or useful. MyStudentSurvey has a cost as well. Also, when the state was paying for the pilot survey, the company lost most of the district's survey data one semester.
  - b. For student surveys, the Tennessee Department of Education uses a survey they developed through the Safe and Supportive Schools grant. The staff survey results are reported in simple PDFs. In Panorama, results can be viewed by quadrant, by cluster, by tier, by the supervisor, and so forth with a click of a button. To use the state PDFs in this way, a great deal of staff time would be required to figure out how to put these data together, and it would have inferior graphics.
  - c. In addition, for state staff surveys and possibly the student survey there is little room for customization. Metropolitan Nashville Public Schools is creating surveys aligned to the strategic framework, which the state cannot do. Dr. Stenson also stated that they can get response level data to validate their survey scales, which had not been possible from the state staff survey. Because there is now response-level data, if they don't feel that the scale is adequately capturing a concept (equity, for example, which is not captured by state surveys), they can add questions, delete them, and run statistics on them.

### **Discussion and Analysis**

The contract is consistent with the description provided by Metropolitan Nashville Public Schools.

### **Conclusion**

The allegation that Metropolitan Nashville Public Schools was recognized nationally for their climate survey they had worked on with Vanderbilt but Metropolitan Nashville Public Schools paid Panorama for the same climate survey is **unsubstantiated**.

### **Allegation D**

Dr. Shawn Joseph, Director of Schools, became a member of the board of trustees of Learning Forward in December 2017 resulting in a conflict of interest between Metropolitan Nashville Public Schools and its participation with Learning Forward.

### **Learning Forward Contract**

2-428-634-00; August 1, 2016 – July 31, 2017; not to exceed, in the fiscal year executed, \$64,490

### **Facts**

1. The Learning Forward internet site states “Learning Forward is the only professional association devoted exclusively to supporting those who work in educator professional development.”
2. Dr. Shawn Joseph, Director of Schools, reported that he had been an elected board member of Learning Forward since December 2017 on his 2017 conflict of interest form disclosure signed January 19, 2018.
3. Learning Forward stated that no Metropolitan Nashville Public Schools employees had been employed or received compensation. Per Learning Forward, “Dr. Joseph has never been and is not currently an employee of Learning Forward. We have reimbursed Dr. Joseph for travel expense [\$1,128 total for \$567 hotel, \$311 airfare, and \$250 meals] to attend a Learning Forward Board of Trustees meeting.”
4. Learning Forward stated, “Metropolitan Nashville Public Schools has had some employees participate in two networks designed to collaborate with other big city school systems and solve problems of practice. These networks have been facilitated by Learning Forward. These networks have involved 22 school systems Redesign Professional Development Community and 15 school systems Student Success Learning Network (SSLN). The Redesign Professional Development Community program was funded by the Bill and Melinda Gates Foundation, and the Student Success Learning Network was a self-funded program in which each school district paid \$55,000 to participate. In both cases, the funds were spent for meeting expenses, travel, hotel, annual membership to Learning Forward to provide access to tools, platforms, webinars, etc., and for coaches to manage and facilitate the meetings. No employee of Metropolitan Nashville Public Schools was paid in any way except to be reimbursed for travel expenses as contemplated by each of the network programs.”
5. Metropolitan Nashville Public Schools paid Learning Forward \$65,963 in the fiscal year 2017 and \$50,159 in the fiscal year 2018.

### **Discussion and Analysis**

It is not a conflict of interest for Dr. Shawn Joseph, Director of Schools, to serve on the board of Learning Forward in an unpaid position. There was no evidence that Dr. Joseph, Director of Schools, received monetary compensation for being on the board of trustees, except for travel reimbursement in December 2017 for attending one board meeting. He became a board member in December 2017 after the last Learning Forward invoice date of November 20, 2017.

### **Conclusion**

The allegation that Dr. Shawn Joseph, Director of Schools, being a member of Learning Forward's board of trustees is a conflict of interest between Metropolitan Nashville Public Schools and its participation with Learning Forward is **unsubstantiated**.

### **Allegation E**

Sharon Fogler, an educational consultant, is alleged to be part of the Hemphill Educational Consultant (Sharon Hemphill) or that Metropolitan Nashville Public Schools split the services between these two vendors to avoid bringing a \$100,000 contract to the Metropolitan Nashville Board of Public Education for approval.

#### **Sharon Fogler, and Sharon Hemphill, Educational Consultant, Contracts**

##### Sharon Fogler

2-288071-00; April 1, 2017 – July 31, 2018; not to exceed \$50,000; paid \$51,188.15 from April 11, 2017 – March 14, 2018

##### Sharon Hemphill, Hemphill Educational Consultant

2-26293-00; August 1, 2016 –July 31, 2017, not to exceed \$50,000

2-262923-00-OOA1; April 1, 2017 – July 31, 2018, extends the dates only

### **Facts**

1. Sharon Hemphill, Hemphill Educational Consultant, contract dates are August 31, 2016, through July 31, 2017. Ms. Hemphill was contracted, and then the amount of work that Metropolitan Nashville Public Schools wanted to accomplish increased. Sharon Fogler was contracted to assist in the work. They both do the same type of work, but they are separate companies.
2. Dr. Monique Felder, Chief Academic Officer, explained that she was familiar with Ms. Hemphill because she had worked with her previously, and Ms. Fogler was also involved in the work. When Metropolitan Nashville Public Schools needed the same type of work, they believed Ms. Hemphill was qualified and experienced, so they completed a contract with her. Since work was needed at more schools, Ms. Fogler was also contracted to do the work. Ms. Fogler's contract and payments began eight months after Ms. Hemphill's first contract. Ms. Hemphill's amendment in April 2017 only extended the time available to do the work.
3. Accurint for Government Comprehensive Report(s) on Hemphill Consultants, Sharon Hemphill, and Sharon Fogler indicate that both are two separate people and two separate businesses.

### **Discussion and Analysis**

Since the contracts were not federally funded, the state law that requires consultants to be selected based on “competence and integrity” applies (Tennessee Code Annotated § 12-3-1209). Dr. Monique Felder, Chief Academic Officer, stated these vendors were selected based on prior experience with their work, but the selection process was not documented.

Ms. Fogler's contract and payments begin eight months after Ms. Hemphill's first contract. Ms. Hemphill's amendment in April 2017 only extends the time available to do the work.

### **Conclusion**

The allegation that Sharon Fogler is part of the Hemphill Educational Consultant (Sharon Hemphill) or that Metropolitan Nashville Public Schools split the services between these two vendors to avoid

METROPOLITAN NASHVILLE PUBLIC SCHOOLS PROCUREMENT INVESTIGATION (CASE2018-007)

February 7, 2019

Page 11

bringing a \$100,000 contract to the Metropolitan Nashville Board of Public Education for approval is **unsubstantiated**.

### **Allegation F**

1. Metropolitan Nashville Public Schools no-bid contract award to Edgenuity failed to comply with Metropolitan Nashville Public Schools procurement procedures.
2. Edgenuity consultants duplicates work that employees using existing Metropolitan Nashville Public Schools courses and resources could do. Edgenuity was used to provide online courses for classes where students had substitute teachers in the classes. Metropolitan Nashville Public Schools has an existing virtual school.

### **Edgenuity Contract**

2-574937-02; September 13, 2017 – June 30, 2018; not to exceed \$180,000

### **Facts**

1. Metropolitan Nashville Public Schools provides different options for students who have failed a class to get credit for the class. A student could use the Metropolitan Nashville Public Schools virtual school online class for credit recovery. However, this option may not be the best option for a student who did not pass a “face-to-face” class. Metropolitan Nashville Public Schools online classes would be more suited to students who can work more independently and are generally not used for credit recovery. Edgenuity is the most structured option, which would be more suited for students who work less independently. Edgenuity also meets the National Collegiate Athletic Association requirements for potential college athletes.
2. Edgenuity also provides certificated teachers for online classes for first-time class credit for teacher vacancies. A non-certificated teacher, such as a substitute teacher, is only allowed to teach for 20 days in a class, per state requirements. After that, there must be a certificated teacher in the classroom. Per discussion with Dr. Sito Narcisse, Chief of Schools, and Lisa Coons, Executive Director of Learning Technology and Library Services, there were many teacher vacancies at the beginning of the 2017-2018 school year. Dr. Narcisse considered some vacancies to be more critical than others, such as vacancies in math classes.
3. Dr. Sito Narcisse, Chief of Schools, instructed the district to use Edgenuity for credit recovery on August 6, 2017.

### **Discussion and Analysis**

Metropolitan Nashville Public Schools considered the Edgenuity contract an emergency contract due to teacher vacancies and awarded it as an emergency contract. However, there was no form to document how the decision was made. Metropolitan Nashville Public Schools Policy FM 2.111 requires a “written determination of the basis for the emergency, and for the selection of the vendor.” The Purchasing Director has since implemented a form to document emergency contracts.

Federal funds have been paid to this vendor from August 2017 to August 2018. Federal regulations [Code of Federal Regulations 200.320(f)(2)] allow for emergency purchases.

**Conclusion**

1. The allegation the Edgenuity no-bid contract award failed to comply with Metropolitan Nashville Public Schools procurement procedures is **unsubstantiated**.
2. The allegation that Edgenuity consultants duplicates work that employees using existing Metropolitan Nashville Public Schools courses and resources could do is **unsubstantiated**.

### **Allegation G**

The no-bid (sole source) contract award to the Educational Research Development Institute partner company, Amplify, did not comply with Metropolitan Nashville Public Schools procurement policy.

#### **Amplify Contract**

2-167642-06; November 29, 2017-November 28, 2022; not to exceed \$150,725

#### **Facts**

1. Amplify is listed on the Educational Research Development Institute website as a partner company.
2. This contract was awarded sole source. Amplify has a license to be “the only commercial provider of professional development and customer support” for the Core Knowledge Language Arts Program for grades PreK-5. There was a sole source form to document the license. However, the search for the product was not documented before the sole source product was chosen.
3. Lisa Coons, Executive Director of School Support and Instruction stated, “Schools of Innovation, the Core Knowledge Language Arts Program was chosen because we looked for a curriculum that had high ratings in the knowledge building and the foundational components of the curricula. Also, we were finding a misalignment between activities and tasks teachers were asking students to do in comparison to standards expected. So we looked for a curriculum that had a high rating in activities/tasks. Finally, our teachers reported high levels of planning, so we also wanted a curriculum that had easier teacher usability. Core Knowledge Language Arts Program had the highest ratings for foundational skills and knowledge-building curricula; and therefore, we chose this curriculum.”

#### **Discussion and Analysis**

Federal funds were spent (\$53,121 for invoice dates in October 2017; \$9,418 for invoice dates in May 2018). Federal regulations allow sole source purchases, but the process of the selection of the specific product should be documented. Code of Federal Regulation 200.320(f)(4) states “After solicitation of a number of sources, competition is determined inadequate.”

Metropolitan Nashville Public Schools’ explanation for the sole source purchase is consistent with the product ratings. However, the research for the product was not documented before the purchase was made.

#### **Conclusion**

The allegation the no-bid (sole source) contract award to the Educational Research Development Institute partner company, Amplify, did not comply with Metropolitan Nashville Public Schools procurement policy is **unsubstantiated**.

#### **Allegation H**

Metropolitan Nashville Public Schools employees, including Dr. Shawn Joseph, Dr. Sito Narcisse, and wife Maritza Gonzales and others in Dr. Shawn Joseph's management team, have received undisclosed consulting fees from Education Research and Development Institute partner companies.

#### **Education Research and Development Institute and Educational Research Development Institute Partner Companies**

##### **Facts**

1. ERDI reported that they did not pay any Metropolitan Nashville Public Schools or Joseph and Associates, LLC, other than consulting fees to Dr. Monique Felder, Chief Academic Officer. Per ERDI, Dr. Felder received these amounts:

Fall 2016 between September 30, 2016, and October 2, 2016.

- Airline reimbursement - \$551
- Ground transportation stipend - \$70
- Honorarium - \$2,000

Spring 2017 between April 7, 2017, and April 9, 2017

- Airline reimbursement - \$284
- Ground transportation stipend - \$70
- Honorarium - \$2,000

Fall 2017 between September 29, 2017, and October 1, 2017

- Airline reimbursement - \$416
- Ground transportation stipend - \$70
- Honorarium - \$2,000

Dr. Felder did an addendum to her conflict of interest form for the calendar year 2017, on October 15, 2018, because she had disclosed possible future compensation from Educational Research Development Institute prospectively on her prior conflict of interest form on January 30, 2017. The conflict of interest forms should be done retrospectively for the preceding calendar year. The amounts Dr. Felder disclosed on her addendum are the same, except for not listing the two ground transportation amounts, \$70 each. This difference is immaterial, and we consider her disclosure in agreement with our reported amounts from Educational Research Development Institute.

2. On November 29, 2018, Dan Meaney, Financial Manager, Panasonic Foundation indicated there were no payments to Metropolitan Nashville Public Schools employees or board members.
3. Gary Appenfelder, former Purchasing Director, stated that there was no request for proposal since this company is exempt due to being an educational consultant and the vendor was selected by Dr. Shawn Joseph upon his arrival.

**Discussion and Analysis**

Since the vendor was not paid with federal funds, the Tennessee Code Annotated §12-3-1209 is permitting consultants to be chosen based on recognized competence and integrity instead of competitive bidding applies.

**Conclusion**

The allegation Metropolitan Nashville Public Schools employees, including Dr. Shawn Joseph, Dr. Sito Narcisse, and wife Maritza Gonzales, and others on the management team, have received undisclosed consulting fees from Educational Research Development Institute partner companies is **unsubstantiated**.

### **Allegation I**

Achievement Network was excessively billing Metropolitan Nashville Public Schools to reach the maximum amount of the contract, and the purchasing process was not followed for awarding this contract.

### **Achievement Network Contracts**

2-133751-00; May 14, 2014 – June 30, 2017; RFP 13-17; fixed price, indefinite quantity, no not-to-exceed value; for digital educational products

2-133751-00A1; extends the term through May 13, 2019

### **Facts**

1. Per the contract and amendment, there was no maximum not-to-exceed value. The contract was fixed price, indefinite quantity. The contract was awarded by a request for proposal and approved by the Metropolitan Nashville Board of Public Education at the May 13, 2014, meeting.
2. The contract had no maximum value, but Metropolitan Nashville Public Schools issued a purchase order for \$90,000 for the year.
3. Achievement Network billed on an annual fee basis. Lori Scobey, Administrative Assistant to the Executive Officer of Curriculum and Instruction, and Katea Jones, Executive Assistant to the Chief Academic Officer, realized that Achievement Network had not sent monthly invoices and then they received invoices that listed, for example, one phone call or service for an amount that appeared excessive.
4. There was a billing dispute between Achievement Network and Metropolitan Nashville Public Schools that was resolved.

### **Discussion and Analysis**

Management (including Dr. Monique Felder, Chief Academic Officer, Dr. David Williams, Executive Officer of Curriculum and Instruction, and Jeff Gossage, Purchasing Director) held discussions with the vendor, and the billing dispute was resolved.

The contract was awarded using a request for proposal and approved by the Metropolitan Nashville Board of Public Education.

### **Conclusion**

The allegation Achievement Network was excessively billing Metropolitan Nashville Public Schools to reach the maximum amount of the contract, and the purchasing process was not followed for awarding this contract is **unsubstantiated**.

### **Allegation J**

Read America/Read Worldwide is managed or owned by one individual, Ebony Andrews-Hill, managed from her home, and Metropolitan Nashville Public Schools is the company's only source of income. The individual's income was alleged to be about \$100,000, and the Metropolitan Nashville Public Schools contract was \$150,000. There is no online footprint of the company or the owner. The contracted vendor may not exist.

### **Read America/Read Worldwide Contract**

2-289987-00; August 9, 2017 – June 30, 2018; not to exceed \$150,000

### **Facts**

1. An Accurint for Government report on the company was obtained. The report confirms that the company is registered online as ReadWorldwide and that ReadAmerica was started by one individual, Ebony Andrews-Hill.
2. Per the Illinois Office of the Secretary of State, LLC division, the company is registered as READ America dba READ Worldwide and has paid its fees to the Office of the Secretary of State for 2017 and 2018. Thus, the company does exist.
3. Ebony Andrews-Hill stated she is the owner; the company is a certified M/WBE company with gross income over \$800,000.

### **Discussion and Analysis**

The Accurint for Government report on Read America/Read Worldwide, and a discussion with the Illinois Office of the Secretary of State indicate the company was in existence at the time of the contract. Also, Ebony Andrews-Hill stated she is the owner, and the company is a certified M/WBE company with gross income over \$800,000.

### **Conclusion**

The allegations that Read America/Read Worldwide is managed or owned by one individual, Ebony Andrews-Hill, managed from her home, and Metropolitan Nashville Public Schools is the company's only source of income and may not exist is **unsubstantiated**.

**Allegation K**

The Discovery Education Contract request for proposal process was manipulated to award the contract to Discovery Education specifically and that the cost of services from Discovery Education is "somewhere around ten times the cost of competitor services."

**Discovery Education Contract**

2-2476804-09; August 1, 2017 – July 31, 2022; not to exceed \$11,415,000; RFP 17-6 STEAM (STEM + Arts) [Science, Technology, Engineering, Math]

**Facts**

1. Request-for-Proposal 17-6 was issued January 26, 2017. Four companies submitted proposals, Advance Education, Discovery Education, Interactive Media Publishing, and School Specialty.
2. See the initial scoring summary.

RFP 17-6 (STEAM for Middle Schools) Scoring Summary

	Advance Education	Discovery Education	Interactive Media	School Specialty
I Specification (30)	16	27	22	19
II Price (25)	25	2	11	9
III Capacity & Scheduling (20)	15	19	16	12
IV Financial Statements (5)	3	5	1	4
V References (10)	10	10	9	9
VI T&C Exceptions (10)	9	2	9	9
Total	78	65	67	62

*Source Metropolitan Nashville Public Schools Purchasing*

3. Per the total scores, the highest to lowest score is Advance Education, Interactive Media, Discovery Education, School Specialty.
4. Since certification is the primary work of Advance Education, Gary Appenfelder, former Director of Purchasing, decided to separate the contracts for the certification portion and the implementation portion. Other bidders, beside Discovery Education, proposed subcontracting the certification portion of the work to Advance Education. The new contract with Advance Education, 2-805908-00 is for August 23, 2017, through August 22, 2020.
5. Advance Education did not offer a curriculum for the implementation work. The remaining bidders for the implementation work were Discovery Education, Interactive Media and School Specialty. The higher two remaining scores, Interactive Media and Discovery Education, were reviewed in more detail.
6. Gary Appenfelder, former Purchasing Director, stated that he performs statistics on scores, to look for outliers, to look for inconsistencies in scores among the evaluators, and to identify if one person

noticed something another person did not notice. In this case, he noticed a wider range of scores on certain categories. For example, Interactive Media individual evaluator scores on Approach and Timeline ranged from 18-25, of a possible 30. Some evaluator comments were inconsistent. Some comments were that there is no actual curriculum and that there is too much left to interpretation. On some items, the vendor did not propose to meet the requirements of the request for proposal. If there had been only one issue, this might not have caused anyone to look further. However, taken as a whole, Mr. Appenfelder questioned whether the vendor could meet their proposal and provide sufficient service.

7. Gary Appenfelder, former Purchasing Director, requested Interactive Media to do a presentation on how they could meet the items in the proposal and request for proposal. There are no minutes available from this meeting. However, Gary Appenfelder, (former) Purchasing Director, stated that the vendor did not provide substantially different information from the initial proposal.
8. Policy FMp 2.129 Contracts Procedure 4. Request for Proposal Procedure (xi.) states, "If appropriate, after initial evaluation is completed, two or more of the proposers may be selected as finalists for consideration. Interviews with, or presentations from, the finalists may be used to make final award recommendations." Therefore, having a meeting with a bidder was not a violation of policy.
9. Discovery Education's \$12,112,300 proposal exceeded certain requirements in the request for proposal. The contracted cost amount was reduced \$697,000 to account for removing the certification portion that had been contracted to Advance Education and for the items that exceeded the request for proposal.
10. No bidder protested the awarding of the contract to Discovery Education.

### **Discussion and Analysis**

A responsive and responsible bidder did not submit a proposal with a cost ten times lower than Discovery Education.

### **Conclusion**

The allegation that the 17-6 Request-for-Proposal process was manipulated to award the contract to Discovery Education specifically and that the cost of services from Discovery Education is "somewhere around ten times the cost of competitor services" is **unsubstantiated**.

### **Allegation L**

Research for Better Teaching contracted services are split between departments using multiple contracts to circumvent the \$100,000 Metropolitan Nashville Board of Public Education approval requirement. There is a separate contract providing the same service. Someone is getting a kickback.

It appeared the contract was split into three agreements (one for \$50, another for \$50,000 and another for \$12,000) to circumvent the \$100,000 board approval requirement.

### **Research for Better Teaching**

No contract exists.

The \$147,858 expenditures for the 2017-2018 school year, which were incurred from the General Purpose School Fund only, are the subject of this review.

### **Facts**

1. As of November 7, 2018, Research for Better Teaching invoices dated between October 31, 2016, and May 21, 2018, total \$172,161.
2. Dr. Monique Felder, Chief Academic Officer, stated that there were two scopes of work prepared for Research for Better Teaching. One scope was for ongoing, regular professional development for staff in coaching positions such as Literacy Teacher Development Specialists, Numeracy Coaches, and so forth, on high expectations teaching. The other scope was for ongoing, regular professional development for leaders (i.e., principals, and so forth) in 20 schools to receive in-depth and extensive professional development on topics such as Analyzing Teaching for Student Results.
3. Metropolitan Nashville Public Schools had six (not three) separate "agreements" in July 2017 with Research for Better Teaching for services (18-174.2, 18-180.1, 18-174.1, 18-180.2, 18-187, and 18-252). These agreements were drafted into a draft contract that was never finalized. Five "agreements" were for the Analyzing Teaching for Student Results scope of work, including one for the vendor's project manager providing onsite services, totaling \$188,139; one "agreement" was for a separate scope of work on High Expectations Teaching, \$57,497.
4. Metropolitan Nashville Public Schools Contracts Policy FM 2.113 Revision November 2016, states that a contract will be initiated when "repetitive cumulative purchases of a good or service, or from a particular vendor, are expected to exceed \$25,000 during the year." Dr. Monique Felder, Chief Academic Officer, stated that she was not aware of this policy.

### **Discussion and Analysis**

In February 2018, there were discussions about forming a contract (about \$250,000) that was expected to be sent to the Metropolitan Nashville Board of Public Education for approval. However, the contract was never finalized. As of April 2018, the contract process was terminated due to budget priorities.

Unauthorized Purchase Request (UPR) is the term that Metropolitan Nashville Public Schools developed for a form to document payments made without purchase orders. It has **no** reference to whether the item or service purchased was a proper item or service, or whether a contract was in place or not. Using

purchase orders is the best practice, and they should be used. When services were received without a prior requisition and purchase order, the purchasing process has been circumvented.

There were three Unauthorized Purchase Requests prepared for payments to Research for Better Teaching. One, June 20, 2017, was for the payments January 2017 through June 2017, for \$12,143. The second and third ones were for purchases since July 17, 2017, with signature dates September 22, 2017, and November 3, 2017. However, the scope of works were comingled on the Unauthorized Purchase Requests.

Metropolitan Nashville Public Schools does not have a consistent, reliable method to track expenditures per contract, per scope of work, or per vendor in order to ensure contract limits or certain policies are met. The vendor ledger screen in the general ledger system shows the transactions with the vendor. However, the screen does not list the contract numbers for the transactions. In the case of Research for Better Teaching, there was no contract. If there had been a contract for each scope of work, with a method to track those expenditures, the amount spent per scope of work could have been easily determined.

Gary Appenfelder, (former) Purchasing Director and Jeff Gossage, current Purchasing Director had explained to Dr. Monique Felder, Chief Academic Officer, what was required for the contract, purchase order, and invoice processes due to the funds already spent, the “agreements” to spend more, and that the “agreements” submitted for payment were not invoices. There are invoice dates for services provided between October 2017 and February 2018 (when discussions on forming a contract resumed).

There should have been a contract per Metropolitan Nashville Public Schools Contracts Policy FM 2.113 Revision November 2016 because over \$25,000 was paid.

There was more than one scope of work for Research for Better Teaching. One scope of work was less than \$100,000. If that scope of work had been drafted into a contract before the work was performed, the contract would not have been subject to Metropolitan Nashville Board of Public Education approval.

The other scope was initially more than \$100,000 per the “agreements” with Research for Better Teaching, but the amount paid was reduced. If the full amount had been drafted into a contract before the work was performed, the contract would have been subject to board approval. If only the amount paid had been drafted into a contract, the contract would not have been subject to board approval.

### **Conclusion**

The allegation that Research for Better Teaching services are split between departments; there is a separate contract providing the same service; the same vendor has multiple contracts; someone is getting a kickback; the contract was split into three agreements (one for \$50, another for \$50,000 and another for \$12,000) to circumvent the \$100,000 board approval requirement is **unsubstantiated**.

However, the amount paid exceeds the \$25,000 per Contracts Policy FM 2.113 Revision November 2016, and there should have been a contract in place before spending the funds. Purchase orders should have been used in advance. Given that the Unauthorized Purchase Requests were prepared, these Unauthorized Purchase Requests should have been denoted per scope of work to reduce confusion on the amount paid per scope of work.

### **Allegation M**

1. Metropolitan Nashville Public Schools paid extra inappropriate expenditures for Moreno Carrasco, a new employee when the new administration came in July 2016, for an extended period of time with federal funds, and for "trendy air b&b's" with high costs.
2. Metropolitan Nashville Public Schools paid extended temporary housing for other employees and used federal funds.

### **Facts**

1. Per the general ledger, the moving expenses for Moreno Carrasco were less than \$4,000, and for July 2016 through September 2016. The time period of transition was three months. The nightly rates of temporary housing ranged from \$29 to \$72.
2. Per the general ledger search, only the operating fund had moving expenses; federal funds were not charged.
3. Dr. Shawn Joseph's employment contract allowed moving expenses and temporary housing costs. All were paid by October 14, 2016.
4. Dr. Sito Narcisse and Dr. Monique Felder were the only two Chief's whose contracts required moving expenses. Their contracts did not include temporary housing costs.
5. Chief Jana Carlisle had moving expenses paid September 2016, and Moreno Carrasco had moving expenses paid September 2016.
6. Dr. Monique Felder was not named on a reimbursement.

### **Discussion and Analysis**

Some moving expenses were paid to other staff in addition to the Chief positions. However, these staff did not have employment contracts. All of the moving expenses for the new administration were completed by the end of October 2016.

Moving expenses were only charged to the operating fund, not federal funds. Charges were paid within four months of the change in administration.

### **Conclusion**

1. The allegation that Metropolitan Nashville Public Schools paid extra inappropriate expenditures for Moreno Carrasco, a new employee when the new administration came in July 2016, for an extended period of time with federal funds, and for "trendy air b&b's" with high costs is **unsubstantiated**.
2. The allegation Metropolitan Nashville Public Schools paid extended temporary housing for other employees, and used federal funds is **unsubstantiated**.

### **Allegation N**

The Metropolitan Nashville Public Schools was preparing to execute a contract with Scholastic as a result of accepting a trip to a 2017 conference on Amelia Island, paid by Scholastic.

#### **Scholastic Contracts**

2-78641304; July 24, 2015 – July 31, 2018; not to exceed \$300,000 fiscal year (issued)

2-78641304A1; July 24, 2015 – July 31, 2018; changes topics of training provided

2-78641304A2; July 24, 2015 –July 23, 2020; extends the term to July 23, 2020

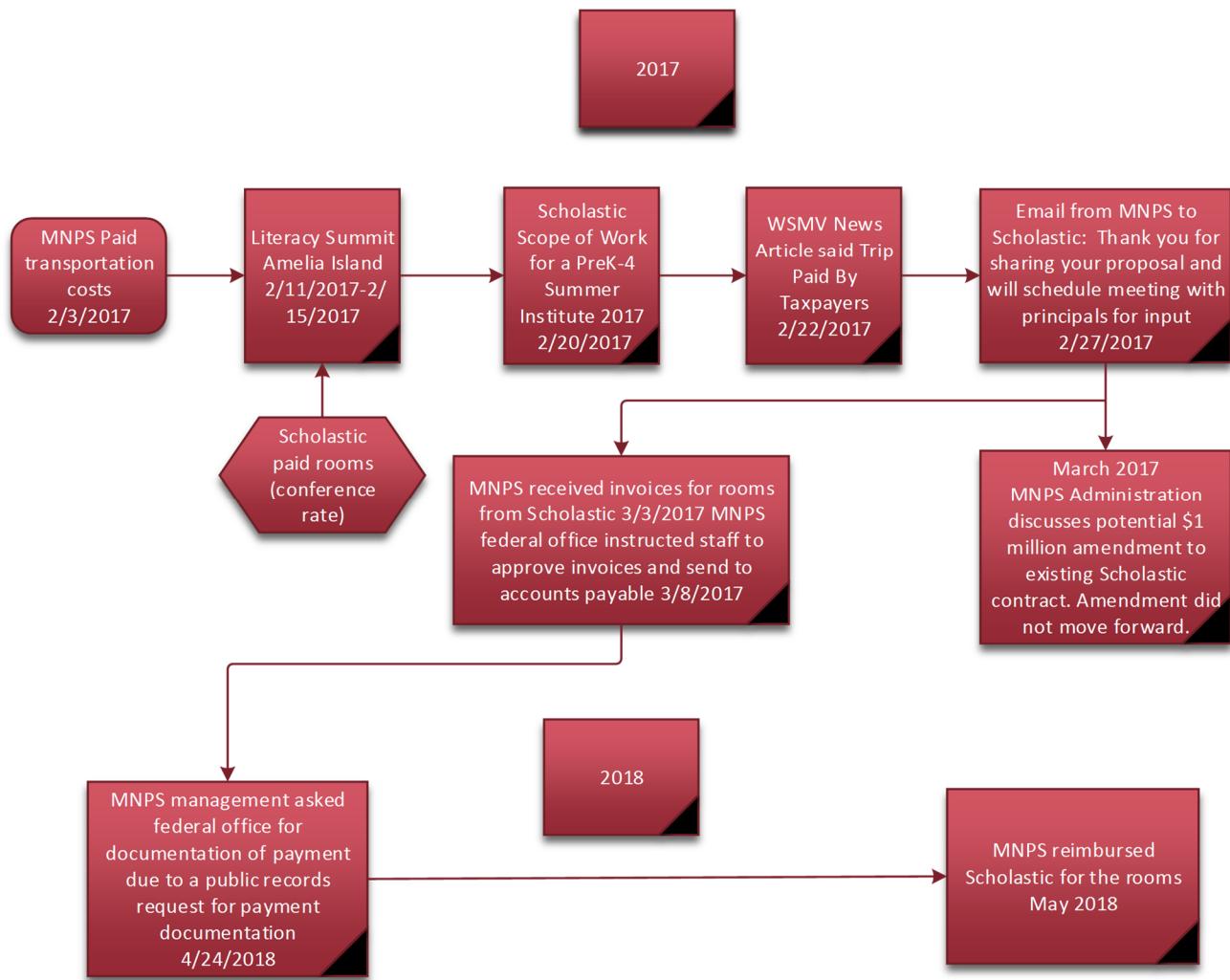
#### **Facts**

1. The Scholastic Literacy Summit was February 12-15, 2017, at the Ritz Carlton Amelia Island. Seven of the ten Metropolitan Nashville Public Schools' conference attendees arrived in Jacksonville, Florida on February 11, 2017.
2. Metropolitan Nashville Public Schools initially paid the transportation to the event. However, they did not pay the remainder of the costs, mostly hotel rooms, until a year later after a public records request for documentation of the payment. The invoice was paid with payment number PT380618, May 2, 2018, for \$14,333.40 (10 staff, for \$1,433.34 each). This was for four nights of hotel, ground transportation, and meals for the conference for 10 participants.
3. Scholastic reserved rooms at a conference discounted rate. About one week after the trip, on February 22, 2017, a local news investigative reporter published an article about the trip taken to the Ritz Carlton hotel at Amelia Island. The article stated that Metropolitan Nashville Public Schools paid for their trip.
4. There was documentation in one email, before the conference, where a staff person told the Scholastic liaison that Scholastic could invoice for an alternate hotel on the first night of the conference since the host hotel had no more availability.
5. In a different email, after the conference, in March 2017, Merrie Clark, a Federal Programs Office member, on March 8, 2017, instructed staff, Brenda Stone, to approve and process the invoices received on March 3, 2017, for the rooms. However, Ms. Stone did not do it. Ms. Stone stated that she must have forgotten and she had a personal family emergency during that time. No further follow up was done until the 2018 public records request for documentation of payment of the rooms.
6. There was a scope of work created either beginning at the conference or completed shortly after the conference. "A Professional Learning Proposal Submitted by Scholastic Education to Metro Nashville Public Schools, February 20, 2017" was for a PreK-4 Summer Institute 2017.
7. The administration discussed placing a potential \$1 million amendment to the existing \$300,000 contract with Scholastic on the March 28, 2017, Metropolitan Nashville Public Schools Board of Public Education meeting agenda. The Vice-Chair of the board said she would not approve such a

large contract since the Amelia Island trip had just been in the news. The amendment did not move forward for consideration by the Metropolitan Nashville Board of Public Education.

### Discussion and Analysis

#### Exhibit A - Scholastic Events Timeline



Even though there is one email before the trip occurred, that mentions an invoice for at least the first night of some rooms; Metropolitan Nashville Public Schools did not reimburse Scholastic for any of their rooms until over a year later in May 2018. Testimonial evidence indicates the late payment was due to staff error in processing the invoices because of a family emergency.

The potential expenditure of \$1 million that would require a formal process of sealed bids or competitive proposals never moved forward for consideration by the Metropolitan Nashville Board of Public Education.

Scholastic Intentions To Collect The Reimbursement Or Not

Scholastic did not follow up to collect the reimbursement. Scholastic stated that many schools have no conflict of interest in accepting the compensation. Scholastic records the reimbursements received as a reduction of expenses, instead of revenue, and therefore the uncollected reimbursements would not be reflected on a report such as an accounts receivable aging report. Since it is not a major concern for Scholastic, Scholastic did not follow up to collect the reimbursement.

The discussion of a potential \$1 million Scholastic contract without sealed bids and competitive proposal shortly after the Amelia Island conference can create an appearance of a conflict of interest for some citizens when viewed in conjunction with the 13-month delay in payment for the hotel expenses by Metropolitan Nashville Public Schools.

**Conclusion**

The allegation that Metropolitan Nashville Public Schools was preparing to execute a contract with Scholastic as a result of accepting a trip to a conference on Amelia Island, paid by Scholastic was **unsubstantiated**.

## **Allegations O**

1. The Performance Matters contract is for a data warehouse, even though Metropolitan Nashville Public Schools already had an excellent one.
2. The Metropolitan Nashville Board of Public Education approved a summary of contracts with Performance Matters for \$1.1 million, but the actual contracts filed with the Metropolitan Nashville Clerk's Office indicates \$1.8 million between the two contracts.

## **Performance Matters Contracts**

### *True North Logic Professional Development*

2-276664-00; November 20, 2016- June 30, 2019; not to exceed FY 2016-2017 \$0 and Future Years \$845,651

Contract for a “contractor-hosted web-based software platform for managing and scheduling professional development and employee growth management” [This contract is the one commonly known as the contract for professional development (True North Logic) and is a cooperative (piggyback) contract from Shelby County Schools.] [Contract approved by the board in summary.]

2-276664-00A1 Amendment #1 extends the contract term to June 30, 2019, and increases compensation by \$160,000 to reach a new not to exceed value \$690,004.

Contract is for contractor’s TrueNorthLogic personalized professional development management platform. [An apparent error was made because the effective decrease in compensation was \$155,647, which rounds to a decrease of \$160,000.]

### *Unify Student Assessment System*

2-276664-01; November 30, 2016 – June 30, 2019; not to exceed \$1,000,000

Contract for “an Authoring platform, Test Element Bank, Assessment Delivery and Reporting System License, Maintenance, Support, and Professional Services, via Contractor’s Hosting Environment” [This contract is the one commonly known as the contract for student assessment system (Unify), and is a cooperative (piggyback) contract from Orange County, Florida.] [Contract approved by the board in summary included in the \$1.1 million].

## **Pearson Contract**

2-694598-01 NCS Pearson; May 1, 2017 – June 30, 2018; not to exceed \$370,062

Contract for “Month-to-month continuation of services, as needed, from Contractor’s Instructional Management Suite and PD (Professional Development) Planner Products.” [This contract is the one commonly known as the month-to-month provision because the PD Planner product was being discontinued and Metropolitan Nashville Public Schools was looking for a replacement.]

## **Facts**

1. Metropolitan Nashville Public Schools had a contract with Pearson for the PD Planner product. However, Pearson announced (in summer or fall 2016) that the product would be discontinued. Also, the Metropolitan Nashville Public Schools contract was going to expire. Metropolitan Nashville Public Schools amended the contract (2-694598-01) to continue on a month-to-month basis while a

replacement product could be located and implemented. Metropolitan Nashville Public Schools hoped to implement a product by the start of the calendar year 2017. Metropolitan Nashville Public Schools had been planning to look for a professional development system, but there was not as much time urgency.

2. Performance Matters sells both a student assessment system and a professional development system. Performance Matters had contracts with Orange County, Florida (student assessment system), and Shelby County Schools (professional development system) that had been competitively bid. Metropolitan Nashville Public Schools decided to use cooperative (piggyback) contracts from each of those contracts because a formal Request for Proposal process would have taken much longer.
3. Metropolitan Nashville Public Schools Purchasing Policy, FM 2.111, as of November 2016, states contracts issued by another Tennessee municipality or local education agency may be used as a source of purchases.

Cooperative (piggybacking) contracting is a method of interlocal purchasing. Tennessee Code Annotated 12-3-1203 (b) allows other local education agency to purchase equipment under the same terms of a legal bid initiated by any other local education agency in Tennessee, and Tennessee Code Annotated 12-3-1203 (c) allows other local government units to purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any local government unit of Tennessee.

### **Discussion and Analysis**

Neither of the Performance Matters contracts states it is for a data warehouse. Metropolitan Nashville Public Schools stated that they still use their original data warehouse and have made upgrades to it. Performance Matters does sell a smaller data warehouse type of product, but Metropolitan Nashville Public Schools believes that the product is not sufficient for their needs.

Metropolitan Nashville Public Schools purchasing staff made an error in the amounts of the contracts because they inadvertently listed the end dates as 2019 in the contracts, not 2018 as approved by the Metropolitan Nashville Board of Public Education. Since the two contracts were with the same company, the contracts amounts were combined into a summary on the consent agenda. The total not-to-exceed amount in the contracts were \$1,215,713, but the Metropolitan Nashville Board of Public Education had approved \$1.1 million. The \$698,653 amount paid to Performance Matters for services between December 2016 and June 2018 was less than the \$1.1 million approved by the Metropolitan Nashville Board of Public Education.

The professional development system, True North Logic, was procured using Shelby County Schools existing competitively bid solicitation. However, the student assessment system, Unify, procured using an Orange County, Florida solicited contract does not comply with the requirements cooperative purchases using other local government solicitations and resulting contract terms should be limited to Tennessee government units.

Since no federal funds were used, the Tennessee Code Annotated § 12-3-1209 allows consultants to be chosen based on “competence and integrity” instead of competitive bidding applies.

### **Conclusion**

1. The allegation that the Performance Matters contract is for a data warehouse, even though Metropolitan Nashville Public Schools already had an excellent one is **unsubstantiated**.
2. The allegation that the Metropolitan Nashville Board of Public Education approved a summary of contracts with Performance Matters for \$1.1 million, but the actual contracts filed with the Metro Clerk's office indicates \$1.8 million between the two contracts is **substantiated**. However, this error does NOT appear to have been intentional. The \$698,653 amount paid to Performance Matters for services between December 2016 and June 2018 was less than the \$1.1 million approved by the Metropolitan Nashville Board of Public Education.

### **Investigators Assigned**

Mary Cole, CPA, CFE, CISA, CGFM

James Carson, CIA, CFE (Quality Assurance)

Mark Swann, CPA, CIA, CISA, CMFO (Quality Assurance)

### **Purpose of Investigation**

The Metropolitan Nashville Office of Internal Audit conducts internal investigations of potential violation of governance policies established for the Metropolitan Nashville Government or investigations of potential fraud, waste, and abuse. Investigation requests are received from the management of the Metropolitan Nashville Government or tips received from the Metropolitan Nashville Government fraud, waste, and abuse hotline.

Any findings or observations of potential fraud and other criminal acts would be referred to the 20th Judicial District Attorney Office, Metropolitan Nashville Police Department, or other appropriate agency. Any findings related to employee misconduct, waste, abuse; as well as process inefficiencies and deficient internal controls would be forwarded to the management of the Metropolitan Nashville Government for corrective action.

We conduct investigations and create reports using the Standards of the Association of Certified Fraud Examiners as a guide. The standard of “preponderance of the evidence” is used as a basis for substantiating or not substantiating an allegation. Key definitions used during investigations include

- Preponderance of Evidence – A certain set of facts “more likely than not” occurred.
- Substantiated – The preponderance of the evidence collected during the investigation indicates that the incident occurred.
- Unsubstantiated - The evidence collected during the investigation indicates there was not a preponderance of the evidence to support the allegation or that the evidence obtained in the inquiry was conflicting or inconclusive.

The Metropolitan Nashville Office of Internal Audit discovery of evidence is primarily from Metropolitan Nashville Public Schools’ financial and operations records, interviews and discussions with current employees, prior employees, and certain vendors, as well as individuals who wish to remain anonymous. Personal or private information, assets, and financial and operations records will be reviewed when voluntarily provided by parties involved in an investigation, or contractual audit clauses facilitate such reviews.

The purpose of this investigation is to determine if the events described in the allegations occurred or did not occur.

## APPENDIX A – RECOMMENDATIONS AND MANAGEMENT CORRECTIVE ACTION PLAN

### Recommendation for Metropolitan Nashville Public Schools to:

1. Use the more stringent policy between Metropolitan Nashville Public Schools procurement policy or the federal *Uniform Grant Guidance 200.320* for purchases with federal funds. "*Uniform Grant Guidance 200.320 Methods of Procurement to Be Followed*" requires different methods based on threshold amounts. As of November 2016, the Metropolitan Nashville Public Schools' purchasing policy did not allow exclusions from competition.
2. Document the process of determining the "recognized competence and integrity" when nonfederal funds are used. *Tennessee Code Annotated § 12-3-1209* allows entities to choose educational consultants on the basis of "recognized competence and integrity."
3. Implement a consistent, reliable method to track expenditures per contract and scope of work to ensure contract limits and procurement policies are followed. Existing computer system limitations should be resolved with the planned iProcurement and Oracle Enterprise Business System implementation scheduled for July 2019.

## **APPENDIX B – METROPOLITAN NASHVILLE PUBLIC SCHOOLS’ PROCUREMENT POLICIES**

Metropolitan Nashville Public Schools' prior procurement policies start on the next page.

- FM2.111 Purchasing Policy Revision, November 2016
- FM2.112 Purchasing Card Program Revision, May 2014
- FM2.113 Contracts Policy November 22, 2016, Revision, November 2016
- FM2.113a Initiating Contracts Conflict of Interest Statement Revision, November 2009
- FMp 2.129 Contracts Procedure November 22, 2016
- HC 5.110 Ethics, Conflicts of Interest and Acceptance of Gifts Updated June 2015



## Purchasing Policies - General

The MNPS Board of Education (MNPS) Board of Public Education (MBPE) Executive Expectations EE-7 includes the following guidance for the establishment of this policy:

- Seek approval of the Board before committing to any single expenditure greater than \$100,000.
- Commit to the following before making purchases:
  - Exercise reasonable precaution against conflicts of interest. See HR 5.110 *Ethics, Conflicts of Interest, and Acceptance of Gifts*. For any federally funded purchase, any potential conflict of interest must be reported in writing to the awarding agency.
  - Consider comparative prices based on items of similar quality.
  - Consider a balance between long-term quality and cost.

Competitive bidding procedures, as described below, must be used for the purchase of all supplies, materials, equipment, and services unless the purchase is exempt from competitive award, as defined herein.

**Revision History**  
November 2016  
March 2013  
April 2011  
December 2009  
November 2009  
April 2009  
August 2008

**Review**  
Annually

**Date Last Reviewed**  
November 2016

## Sources of Purchases

The need for the acquisition (purchase) of goods and services (excluding construction services) may be identified by any MNPS employee and the employee may initiate the purchase when authorized by his/her school principal or department head. School needs are determined by the principal and/or leadership team and should be included in the School Improvement Plan (SIP). All Federal Program purchases must have the approval of the Executive Director of Federal Programs or his/her designee.

Construction services are purchased and administered by the MNPS Facility Planning and Construction Department. Procurement sources shall be used in the following sequence to meet the need:

- Surplus goods available from MNPS, other departments of the Metropolitan Government of Nashville and Davidson County (Metro), the State of Tennessee and the United States Government.
- Contracts issued by MNPS.
- Contracts issued by the government of Metropolitan Nashville and Davidson County, the State of Tennessee, another Tennessee municipality or Local Education Agencies (LEA), and of Regional or National Purchasing Cooperatives. Contracts (other than those issued by MNPS, Metro, the State of Tennessee) must be approved by the MNPS Director of Purchasing before relying on them for MNPS purchases.
- Any vendor awarded a purchase resulting from the application of MNPS competition requirements defined in this policy.
- Any vendor awarded a purchase or contract for goods and/or services not requiring competition.

## **Surplus Goods**

The MNPS Fixed Assets Department manages the inventory of surplus goods and may know of the availability of surplus goods in the inventories of the State of Tennessee and the U.S. Government. Employees shall first attempt to meet their needs from these inventories by contacting the Fixed Assets Department. Surplus goods in the inventory of MNPS Fixed Assets Department are available at no cost and without limit unless limited stocks are allocated among known interested schools and departments to achieve an equitable distribution. The State and U.S. Government may require payment for the acquisition of surplus goods from their inventories. No competition is required for the acquisition of surplus goods.

## **Competitive Requirements for Purchases**

Schools and departments needing goods and services that cannot be acquired from surplus inventories or from approved contracts shall comply with competition requirements stated below. These requirements differ depending upon the estimated value of the quantity or amount of the goods or services expected to be required for the foreseeable future, not to exceed one year. All procurement transactions must be conducted in a manner providing full and open competition, unless exempted from competition as defined in this Policy.

- **Competition Requirements for Purchases Less Than \$3,500**  
All purchases less than \$3,500 shall be awarded to a responsible and responsive vendor quoting a price considered to be reasonable by the MNPS employee initiating the purchase. The vendor may submit the quotation verbally or in writing.
- **Competition Requirements for Purchases of \$3,500 to less than \$25,000**

All purchases of \$3,500 to less than \$25,000 shall be awarded to the responsible and responsive vendor quoting the lowest reasonable price. Quotations or Bids must be solicited from at least three vendors who can reasonably be expected to have the ability to supply the required goods or services. The quotations may be either verbal or in writing. If verbal, the quotations must be documented (e.g. notes attached to the requisition).

- **Competition Requirements for Purchases of \$25,000 or greater**

All purchases of \$25,000 or greater shall be awarded by MNPS Purchasing using sealed bids (ITBs) or competitive sealed proposals (RFPs). A MNPS Contract Agent shall conduct the solicitation and award in accordance with FMp 2.129 *Contracts Procedure*.

For purchases supported with federal funds and valued at \$150,000 or more, the Contract Agent must conduct a cost or price analysis and retain evidence of the analysis in the purchase file.

### **Responsible and Responsive Vendor**

A responsible vendor is one who can fulfill all the requirements of the purchase and who has the integrity and reliability to assure performance. A responsive vendor is one whose quotation meets all the terms, conditions and specifications of the purchase solicitation.

Prior to requesting a new vendor activation in the Metro Enterprise One System, MNPS Purchasing will confirm that the vendor is not on the U.S. Government's Excluded Parties List (found at [www.sam.gov](http://www.sam.gov)).

### **Purchases not Requiring Competition**

The acquisition of goods or services that are available from only one vendor or one brand (sole source), or that are needed on an emergency basis, are exempt from competition requirements. For any item/service that is exempt from competition, if a single purchase is to exceed \$25,000, the MNPS Purchasing Department may exercise the option to validate/justify the total cost by appropriate means.

- **Sole Source Purchases**

A sole source purchase is one where there is only one vendor capable of providing an item or service, or its functional equivalent, and therefore it is not possible to obtain competitive bids. Specifying a Brand Name is not justification for a sole source determination. Creating a specification that includes functionality or attributes beyond what is operationally necessary, for the purpose of restricting competition is not justification for a sole source determination. The recommendation/request for a sole source determination must be approved by the MNPS Director of Purchasing before the purchase

is awarded. Schools and departments may request sole source status for procurement by submitting the Sole Source Justification Form (attached) to MNPS Purchasing.

- **Purchases Exempt from Competitive Award**

Goods and services exempt from competitive award, except in the case where federal funds are to be used for the purchase, include:

- Maintenance of high technology equipment or software, including copy machines
- Where the compatibility of equipment, accessories, or replacement parts is of paramount importance
- Where a sole supplier's product is needed for trial use or testing
- Where a sole supplier's product is to be purchased for resale
- Postage and services purchased from the U.S. Postal Service
- Freight
- Advertising and services in any commercially available media (radio, television, newspaper, billboard, internet, etc.)
- Automobile licenses and titles
- Subscriptions
- Professional Entertainers or entertainment services (e.g. rental of indoor/outdoor portable playground items, school fair, etc.)
- Memberships, registration fees, and tuition
- Public Utility services
- Perishable items (food, etc.) that are purchased in the open market (TCA 5-14-204)
- Textbooks, reference books, library books, educational films, manuals, pamphlets, workbooks, periodicals and instruction guides, any of the preceding in either physical or digital form
- Professional services provided by individuals, such as doctors, lawyers, architects, engineers, educational consultants, etc. (see TCA 12-3-1209)
- Works of art

- **Emergency Purchases**

The Director of Schools, the appropriate MNPS Executive Staff Member, the MNPS Director of Facility and Grounds Maintenance, the MNPS Director of Business Services, and the MNPS Director of Purchasing may make or authorize others to make emergency procurements when necessary to (1)

avert hazards that threaten health or safety, (2) protect property from damage, or (3) avoid disruptions in MNPS operations, provided that emergency procurements be made with such competition as is practical under the circumstances.

Emergency procurements must conform to competitive quoting/bidding requirements. However, it is expected that the quote/bid process will be modified depending upon the emergency. A written determination of the basis for the emergency, and for the selection of the vendor, shall be included in the purchase file.

If the procurement exceeds budget authorization, the official making the emergency determination shall notify the MNPS Chief Financial Officer and the Board of Education.

## **Purchase Requisitions**

See FMp 2.141 *Electronic Procurement Procedures*

NOTE: Beginning with the 2008-09 school year, schools may not initiate purchases that have not been included in their School Improvement Plan (SIP) and approved by the Executive Director of Federal Programs and Grants, if the expenditure is from federal funds.

## **Orders by Purchasing Card**

A Purchasing Card may be used for travel purchases, purchases from vendors who will not accept a district purchase order, or in emergency situations where the delay from processing a district purchase order would jeopardize normal operations or personnel safety. See FM 2.112 *Purchasing Card Program*.

NOTE: Use of purchasing cards for items that are paid for by federal funds is not allowed, except for travel expenses, in which case the expenditures must be obligated by the MNPS Travel Agent, using the Purchasing Card held by MNPS Purchasing.

## **Issuance of Purchase Orders**

The MNPS Purchasing Department may issue a purchase order to a vendor upon receipt of a properly submitted and authorized requisition. A purchase order is a formal commitment by MNPS to pay the stated amount if the vendor provides the goods and/or services specified in the purchase order. A written contract must be in place for any purchase exceeding \$25,000.

## **Protest or Dispute of Purchase**

Protests or disputes initiated by a third party are subject to the process specified in FMp 2.140 *Protest Procedure*.

## **Purchasing Records**

Schools and departments must maintain records at their locations to support all purchasing transactions (e.g. requisitions, quotes, receipts, etc.). The records must provide details of the history of the purchase including, but not limited to, the rationale for the method of procurement, vendor selection or rejection, and the basis for the price. Such records include, but are not necessarily limited to, requisitions, purchasing card statements with receipts, purchase orders, invoices, sole source authorizations, quotations, and receipts. All of these documents are subject to audit and must be kept on file for a minimum of 5 years.

## **Insurance Requirements**

All purchasing transactions are subject to insurance requirements established by the Metro Director of Insurance.

## **References/Authority**

FM 2.113 Contract Policy  
FMp 2.129 Contracts Procedure  
FMp 2.140 Protest Procedure  
FM 2.107 Student Fundraising Policy  
T.C.A. 5-14-204  
T.C.A. 49-2-1-106  
T.C.A. 6-36-115  
T.C.A. 12-4-106  
T.C.A. 12-3-1209  
T.C.A. 49-2-203 (a) (3) (A) (B)  
20 U.S.C. 3474  
2 CFR Part 200



## ***Purchasing Card Program***

Purchasing Cards are VISA credit cards issued through the Metropolitan Nashville Public Schools (MNPS) to authorized MNPS employees.

Purchasing Cards may be used only under the conditions described below for approved commodities and services for use by MNPS.

### ***Obtaining a Card***

- Department Heads may request that any of their employees be issued a VISA card by completing the attached Purchasing Card Application.
- The standard limits are \$1,000 per transaction and \$3,000 per month. Department Heads may request higher limits for unusual circumstances.
- Before being issued a card, employees must attend a Purchasing Card Class instructed by the Purchasing Department and complete the issuing Bank's card application form (available from Purchasing). Classes will be scheduled on request
- After submitting the Purchasing Card Application and attending the Purchasing Card Class, Purchasing will order the card from JP Morgan Chase Bank, the servicing bank. It is usually issued and available in Purchasing within five business days.
- When a card is ready, Purchasing will notify the Cardholder, who must collect the card in person. The cardholder must sign acknowledging receipt.

### ***Card Use***

- Shall be used for MNPS authorized purposes only, not for any personal transactions.
- Only the employee whose name is embossed on the card may use it. No other person is authorized to use it.
- Except as otherwise defined in this policy, the card may be used for emergency purchases only when the delay caused by submitting the purchase through the Procure-to-Pay System (one day) would create a risk to health, safety, property or critical operations.

***Revision History***

May 2014  
March 2012  
May 2007  
July 2005

***Review***  
Annually

***Date Last Reviewed***  
May 2014

- Purchases shall be within the credit limits approved for each card.
- The card may be used for over-the-counter, telephone and Internet transactions.
- When used for telephone and Internet transactions, cardholders need to be cautious to use reputable vendors.
- When making a purchase by telephone, the cardholder must confirm that the vendor will charge the card when shipment is made so that receipt of the supplies may be certified on the monthly statement.
- Purchasing cards shall not be used for :
  - Cash advances
  - Gift Cards
  - Vehicle fuel and lubricants (fuel cards shall be used for MNPS vehicles)
  - Alcoholic beverages
  - Items for resale such as in school stores (These are items for which sales tax must be paid.)Entertainment
  - Travel-related items (airline tickets, hotels, rental cars, parking lots, etc.). Exceptions for travel-related items must be approved by the Director of Purchasing in advance.
- Cards will be blocked for the items above.
- MNPS receives tax-free status on its purchases except those items bought for resale, as in a school store. Accordingly, the card is prominently embossed with the words "Tax Exempt." Cardholders must be certain they are not charged tax on their purchases. If payment of tax is not discovered until after the cardholder leaves the store, he/she must contact the vendor and obtain a credit for the tax paid. Taxable transactions can be flagged in Payment Net and will not be approved
- The Director of Purchasing shall authorize one person in the Purchasing Department to use a Purchasing Card for purchases from vendors who will not accept a purchase order, and for which there is not a cost equivalent (or better) vendor available who will accept purchase orders. Any such purchase must have the prior approval of the Director of Purchasing.

## **Administration**

The Department Head shall appoint an employee (and a trained back-up) within the department who shall be responsible for training cardholders in the use of the on-line reconciliation process, assisting cardholders in the use and administration of their cards and overseeing the general administration of the card program.

## **Reconciliation**

- The cardholder is responsible for reviewing each transaction on-line at the Bank website to ensure its validity and accuracy. If the cardholder finds an inaccuracy, he or she is responsible for initiating the on-line dispute procedure. This review shall be done as soon as possible following the posting of the transaction on the Bank's website.

- Detailed instructions for reconciling and processing the monthly card statement issued by the Bank are included in MNPS Procedure FMp 2.144 (Purchasing Card Program).

### ***Lost or Stolen Cards***

The cardholder must immediately notify the JPMorgan Chase Bank by telephone at the toll free customer service number (1-800-270-7760) in the event that a card is stolen. The cardholder must also immediately notify the MNPS Purchasing Department by telephone and email, describing the details of the loss or theft. The cardholder will assist the Bank as needed to minimize the liability to MNPS.

### ***Request for Changes***

- Department Heads may request changes to cardholder names (caused by marriage, divorce, etc.), changes in credit limits, etc. by emailing the request to the Purchasing Department.
- If a cardholder is terminated by MNPS, or transferred from one department to another, the transferring Department Head must notify the Purchasing Department by email of the transfer. The Department Head shall collect the card, cut it in half and send the pieces by secure means of delivery to Purchasing.
- If a cardholder needs to take leave for medical or personal reasons in excess of one month, the Department Head shall notify the Purchasing Department by email. The cardholder's credit limits will be reduced to \$1.00 for security reasons until the Department Head notifies Purchasing by email that the cardholder has returned to work.

### ***Annual Inventory***

Annually, the Purchasing Department shall provide to each department a list of Purchasing Cards issued to its employees. The Department Head must conduct a physical inventory of all purchasing cards and provide a list of cards that cannot be found to the Purchasing Department by email.

### ***References and Authority:***

FM 2.111 Purchasing for MNPS  
FMp Purchasing Card Program



## **DEFINITION**

A contract is a voluntary, deliberate, and legally enforceable (binding) agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. Consideration, as it is used in defining a contract, does not have to be financial (payment of money).

Whether a document is called an agreement, contract, memorandum of agreement or memorandum of understanding, it is subject to the requirements of this policy.

All Metro Nashville Public Schools contracts must be in writing.

## **AUTHORITY**

In general, the Metropolitan Board of Public Education (MBPE) is the final approving authority for any contract which is prepared consistent with this guideline.

Any MBPE contract that, initially or by later Amendment, exceeds \$100,000 in award value must be approved by the Board of Education. At its discretion, the district may submit any other contracts, regardless of award value, to the Board for approval. Any Amendment to an existing Board-approved MBPE contract that increases its award value, or any Amendment to a not previously Board-approved MBPE contract that increases the contract value to greater than \$100,000, must be approved by the Board.

The responsibility for all contract negotiations and administration of contract policies and procedures has been centralized and delegated to the Director of Purchasing.

The MNPS Purchasing Department shall be responsible for the preparation, issuance, and administration of all MNPS publicly posted solicitations and contracts, and documentation of the same.

No individual has the authority to enter into purchase contracts in any way unless specifically authorized to do so by the Director of Schools, the Chief Financial Officer or the Director of Purchasing.

**Revision History**  
November 2016  
May 2014  
May 2011  
November 2009  
January 2004

**Review**  
Annually

**Date Last Reviewed**  
November 2016

## **GENERAL**

The process to award a Board of Education Contract will be initiated when any of the following conditions exist:

- Repetitive cumulative purchases of a good or service, or from a particular vendor, are expected to exceed \$25,000 during the year.
- There is a desire or need to secure an assurance of supply and/or service and/or pricing for an extended period of time.
- There is a desire or need to have the protections for liability, indemnity, warranty, infringement, etc. that MNPS standard contract terms provide.
- When it is otherwise judged to be in the best interest of the Board of Education (MBPE) and Metropolitan Nashville Public Schools (MNPS).

Amendments to existing contracts shall clearly state the additions, deletions and modifications to the contract, including a statement as to whether the new terms replace or are in addition to terms expressed in the original contract.

All contracts (or contract requests) shall be submitted to the Purchasing Department prior to the beginning of the contract's original term or renewal date, with adequate lead time to fully prepare, negotiate, and execute the contract prior the contract's effective date.

Budget appropriation shall be established before a contract is executed.

## **COMPETITION REQUIREMENTS FOR CONTRACTS**

All contracts for which purchases during the contract term are expected to exceed \$25,000, unless a noncompetitive award has been expressly authorized by the Director of Purchasing, shall be awarded using competitive sealed bids (Invitations to Bid or ITBs) or competitive sealed proposals (Requests for Proposals or RFPs).

## **CONTRACTS NOT REQUIRING COMPETITION**

Goods and/or services exempt from competition for contract award are those that are available from only one vendor (sole source), those for which a single vendor is directed as a condition of receiving funding for the purchase, those needed on a temporary emergency basis, or those specifically exempted by law, statute, ordinance or MNPS Purchasing Policy FM 2.111.

The requesting school/department will complete and submit to Purchasing the Sole Source Justification form, when appropriate, prior to submitting a contract or contract request to Purchasing for execution. For more information see FM 2.111 *Purchasing Policy*.

## **TYPES OF CONTRACTS**

The following types of contracts are established and administered by MNPS:

- Purchase of Services (including consulting and professional development services)
- Memorandum of Understanding (MOU) - an agreement between MNPS and another Metropolitan Nashville agency stipulating that one will provide a service and the other will compensate for the service, or that the service will be provided at no cost.
- Purchase of Goods
- Purchase of Goods and Services
- Lease of property or goods
- Affiliation Contracts – established between MNPS and secondary education institutions for the purpose of proving students at the Institution with clinical field experience or student teaching experience. These contracts generally have no compensation associated with them.
- Data Use & Integration Security Agreement

## **CODE OF CONDUCT FOR AWARDING CONTRACTS**

No employee, officer or agent of MNPS shall participate in the process for awarding a contract if a conflict of interest, real or apparent, would be involved. For information regarding what constitutes a conflict of interest, and what actions are to be taken in such case, see HR 5.110 *Ethics, Conflicts of Interest, and Acceptance of Gifts*.

All employees, officers, or agents of MNPS involved in an award of a contract shall file a Conflict of Interest statement noting apparent or real conflict of interest. The Conflict of Interest statement shall be effective for one year after signing.

For any contract supported with federal funds, any potential conflict of interest must be disclosed in writing to the awarding agency.

## **SPECIFIC REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS**

For any MBPE contracts that are funded by federal grants, the following special requirements shall apply.

1. All contracts whose funding source is from Federal, State or other Grants, must be approved by the Executive Director of Federal Programs.
2. The contract shall contain any necessary clauses identified in Appendix II of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, or by the awarding agency.
3. The contract shall contain language approved by the MNPS Grant Manager that defines the specific funding source.
4. The MNPS Grant Manager will be named in the contract terms as the MNPS person responsible for financial oversight of the contract (person who receives and approves all invoices)
5. At the time of receiving a contract request (or request for RFP/ITB that is expected to result in a contract), Purchasing will notify the Federal Programs Department. Proceeding with contract initiation shall be dependent upon preapproval by the MNPS Grant Manager for grant funding availability and funding allocation to the specific contract purpose.

## **CONTRACT APPROVAL & SIGNATURE**

Signatures on MBPE contracts will be applied manually, or electronically by an e-signature service approved by the MNPS Director of Purchasing and the Metropolitan Attorney.

Contracts are to be first signed (and notarized, if manually signed) by the Contractor before submitting them for MBPE and Metropolitan Government signatures.

Contract execution will include signature approvals from the following:

- Contractor
- MNPS Executive Director of Federal Programs (for contracts funded by federal grants)
- MNPS Executive Staff Member responsible for funding and/or oversight of the contract
- MNPS Director of Purchasing
- MNPS Chief Financial Officer (CFO)

- MBPE Board Chair
- Metropolitan Director of Finance
- Metropolitan Director of Insurance
- Metropolitan Attorney
- Metropolitan County Clerk (signature & contract filing)

See FMp 2.129 Contracts Procedure for detailed instructions on contract signature routing.

## **COMMENCEMENT OF WORK**

In cases where a MNPS contract is required, the supply of products and/or services under the contract terms will not commence before the contract is fully approved and executed.

## **CONTRACT CLOSE OUT**

Upon termination/expiration of any complex service contract with cumulative actual payments in excess of \$100,000, the following documentation shall be collected and retained in the official contract file maintained by MNPS Purchasing.

1. A report or accounting of the actual payments made to the vendor under the contract, if practicable. A reconciliation of any overpayments or underpayments should be included.
2. A copy of the fully executed original contract, along with original copies of any fully executed amendments to the contract. This is to include any executed documents listed as attachments, addendums, exhibits, etc. to the contract or contract amendments.
3. If applicable, a report listing any inventions, patents, or copyrights, to which MNPS retains an interest, created during, and related to, performance under the contract.
4. If applicable, a complete inventory and reconciliation of any MBPE equipment that the vendor had custody of during the contract term.
5. If applicable, documentation related to early termination of the contract.
6. A written evaluation of the performance of the vendor, and the effectiveness of the services rendered under the contract. This should include a comparison of actual versus expected results from the contract (i.e. did we get the benefit that we anticipated). The template for

completing the performance evaluation is included at the end of this Policy.

## **REFERENCES/ AUTHORITY**

HR 5.110 Ethics, Conflicts of Interest, and Acceptance of Gifts  
FM 2.111 Purchasing Policy  
FMp 2.129 Contracts Procedure  
FMp 2.140 Procedure for Protest  
TCA 6-36-115 Purchases and Contracts  
TCA 12-4-106 Contracts for Professional Services  
TCA 49-2-206 Executive Committee – Powers and Duties  
34 CFR Part 76  
34 CFR Part 80  
OMB Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards

The following template is to be used to document the performance of the vendor and the effectiveness of the services provided, as required by sub-section 6 of the CONTRACT CLOSE OUT section of this Policy.

### Post-Contract Evaluation

Contractor name (vendor): \_\_\_\_\_

MBPE Contract Number: \_\_\_\_\_

Contract start date: \_\_\_\_\_ End date: \_\_\_\_\_

Contracted compensation: \$ \_\_\_\_\_ Actual spend: \$ \_\_\_\_\_

Description of Services: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Deliverable #1:** \_\_\_\_\_

Did the Contractor complete this action/event? Yes  No

If no, explain: \_\_\_\_\_

\_\_\_\_\_

Was the desired outcome achieved? Yes  No

If no, explain: \_\_\_\_\_

\_\_\_\_\_

Was the timeline met? Yes  No

If no, explain: \_\_\_\_\_

\_\_\_\_\_

Was all required documentation provided? Yes  No

If no, explain: \_\_\_\_\_

---

Was the contracted price met? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Deliverable #2:** \_\_\_\_\_

Did the Contractor complete this action/event? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was the desired outcome achieved? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was the timeline met? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was all required documentation provided? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was the contracted price met? Yes  No

If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Deliverable #3:** \_\_\_\_\_

Did the Contractor complete this action/event? Yes    No   

If no, explain: \_\_\_\_\_

---

Was the desired outcome achieved? Yes    No   

If no, explain: \_\_\_\_\_

---

Was the timeline met? Yes    No   

If no, explain: \_\_\_\_\_

---

Was all required documentation provided? Yes    No   

If no, explain: \_\_\_\_\_

---

Was the contracted price met? Yes    No   

If no, explain: \_\_\_\_\_

---

[add sections if more than 3 deliverables]

Evaluator

Dept Head

Contract Agent

---

Signature

---

Signature

---

Signature

---

Name

---

Name

---

Name

---

Date

---

Date

---

Date



MNPS prohibits any employee or officer of MNPS to participate in the selection or award of a contract if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- The employee or officer,
- Any member of his/her immediate family,
- His/her partner or an organization which employs or is about to employ, any of the above,

has a financial or other interest in the firm selected for the award.

No MNPS employee or officer shall solicit or accept gratuities, favors or anything of monetary value from any contractors, subcontractors, potential contractors, or parties to sub agreements. MNPS will not award contracts to independent contractors who have solicited contracts by means of offering gratuities, favors, or anything of monetary value to the MNPS employee responsible for awarding contracts.

The following Conflict of Interest Statement must be signed annually by any MNPS employee responsible for awarding contracts within Metro Nashville Public Schools:

**Conflict of Interest Statement for Awarding Contracts**

By signing below, I affirm that I have no conflict of interest, real or apparent, that might affect my objectivity and impartiality in preparing, submitting, approving or administering any non-competited contract or in evaluating, awarding or administering any competitive contract to provide goods and services to Metropolitan Nashville Public Schools. I also affirm that I have neither solicited nor accepted any gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors who are or may do business with Metropolitan Nashville Public Schools. I also affirm that I have received and read MNPS' Code of Conduct for Awarding Contracts and agree to abide by the provisions contained therein.

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Signature

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Date

---

Printed Name

**Revision History**  
November 2009

**Review**  
Annually

**Date Last Reviewed**  
December 2012

<b>Standard Operating Procedure Outline</b>			
Category:	<b>Fiscal Management</b>	Department:	<b>Purchasing</b>
Procedure:	<b>Procedures for Initiating Contracts</b>		
Policy Reference # : FM 2.113		Version: 2.0	Date: November 22, 2016
<b>Operational Objective(s)</b>			
<ul style="list-style-type: none"> <li>• To detail the process for contracts awarded within MNPS</li> </ul>			
<b>Procedure</b>			
<p><b>A. Selecting the Contractor</b></p> <ol style="list-style-type: none"> <li>1. For contracts of less than \$25,000, Contractor selection is subject to the same rules for competitive award as purchase orders (see FM 2.111 <i>Purchasing Policy</i>).</li> <li>2. If the contracted value is projected to exceed \$25,000, and the goods/services to be contracted are not exempt from competitive award by federal law, Tennessee statute, Metro ordinance, or MNPS policy, the requirements must be publicly posted for competitive selection, either by Invitation to Bid (ITB) or Request for Proposals (RFP), and contract award. The MNPS Director of Purchasing must expressly approve any requests for sole source or emergency contracts.</li> <li>3. Invitation to Bid (ITB) Procedure <ul style="list-style-type: none"> <li>i. The MNPS Contract Agent prepares the ITB using the standard template for ITB maintained by MNPS Purchasing.</li> <li>ii. The solicitation is for sealed Bids and is generally for price only, with the Bid conditions and item specifications stated clearly and in sufficient detail as to avoid receiving bids for non-equivalent items or non-compliant conditions.</li> <li>iii. Item specifications in the ITB are to be generic in nature (if possible), and are not to be so constructed as to unnecessarily restrict competition.</li> <li>iv. The ITB is to be posted on the MNPS website for a reasonably sufficient period of time for prospective bidders to evaluate and respond. The Contract Agent will also send notification of the posting to all vendors who have commodity code(s) in their vendor registration profile that are relevant to the ITB. If time permits, the Contract Agent will identify additional non-registered potential bidders to include in the solicitation.</li> <li>v. In cases where visual examination of the location where an item will be utilized is needed in order to make a correct bid, sufficient time should be allotted for prospective bidders to conduct a site visit/examination.</li> <li>vi. At the deadline time/date for submission of Bids, the Contract Agent show and read aloud all Bids received.</li> <li>vii. The low bidder with a responsive and responsible bid is to be selected as the awardee. If so stated in the ITB terms, the Contract Agent may make award(s) on an item-by-item basis, thereby awarding each item of the ITB to that item's low bidder. Any exception to the low bidder award must be approved by the Director of Purchasing.</li> <li>viii. If only one bid is received, an award may be made to the single bidder if the Contract Agent determines that the bid submitted is fair and reasonable.</li> <li>ix. In the case of a tie low-bid, the Contract Agent may make the award in any fair and impartial way that will discourage tie bids.</li> <li>x. Publish Bid Summary.</li> </ul> </li> </ol>			

**4. Request for Proposal (RFP) Procedure**

- i. The MNPS Contract Agent prepares the RFP using the standard template for RFP maintained by MNPS Purchasing. This is accomplished with collaboration and assistance from the requesting school/department, particularly with regards to the RFP Scope, Functional Requirements, and Evaluation Criteria.
- ii. The evaluation criteria for the RFP will include multiple criteria, including price. Usually, a combination of objective and subjective criteria is used, with the proportionate weight that each criterion will receive in the evaluation stated in the RFP. It is recommended that the RFP instructions require Proposers to submit the pricing portion of their Proposal in a sealed envelope separate from the rest of their Proposal; the evaluation of Proposals can then be conducted without bias introduced by any foreknowledge of pricing.
- iii. If the RFP is to be federally funded and the value of award is expected to exceed \$150,000, the Contract Agent is to perform a cost or price analysis prior to publicly posting the RFP.
- iv. The RFP is to be posted on the MNPS website for a reasonably sufficient period of time for prospective proposers to evaluate and respond. The Contract Agent is to send notification of the posting to all vendors who have commodity code(s) in their vendor registration profile that are relevant to the RFP. If time permits, the Contract Agent will identify additional non-registered potential proposers to include in the solicitation.
- v. At the deadline time for submitting proposals, or as soon thereafter as reasonably possible, the Contract Agent shall open all Proposals, but only to the extent necessary to identify the proposer. Only the name of the proposers will be publicly disclosed until after confirmation and approval of awards.
- vi. The Contract Agent will examine each Proposal to determine if it is responsive and responsible. Only Proposals that are both responsive and responsible will be submitted for competitive evaluation.
- vii. A Proposal Evaluation Committee of not less than 3 members is to be appointed by the Contract Agent, in collaboration with the requesting school/department. Membership of the Committee may consist of both MNPS employees and non-MNPS personnel. The objective is to have sufficient unbiased expertise within the Committee to result in an award recommendation that provides the best value to MNPS.
- viii. Each member of the Committee must sign the MNPS Conflict of Interest Form, or have a Form on file signed within the previous 12 months (see HR 5.110 *Ethics, Conflicts of Interest, and Acceptance of Gifts*).
- ix. Members of the Committee may not be in a supervisory/subordinate role with any other member of the Committee.
- x. Evaluations and award recommendations shall be by Committee consensus. Any alternative method must be pre-approved by the Director of Purchasing. The Contract Agent will act as facilitator for the evaluation process and may not participate as a member of the Evaluation Committee.
- xi. If appropriate, after initial evaluation is completed, 2 or more of the proposers may be selected as finalists for consideration. Interviews with, and/or presentations from, the finalists may be used to make final award recommendation(s).
- xii. The Contract Agent may elect to solicit a "best and final offer" if it is in the best interest of MNPS. A "best and final offer" may only be solicited once for a RFP, and the solicitation must be extended to all original proposers.
- xiii. The Committee may submit a recommendation for single or multiple awards. In either case, recommended awardees must be those who received the highest overall consensus score/rank, based solely on the evaluation criteria specified in the RFP.
- xiv. The Committee's award recommendation(s) must be approved by the Director of Purchasing before contracts are executed. If an award exceeds \$100,000, it must also be approved by The

Metropolitan Board of Education.

5. In the case of either an ITB or a RFP, the posted instructions should include allowance for interested parties to submit questions for clarification of the posted specifications or terms. A deadline should be set for submitting such questions, as well as a prompt deadline for posting the response to questions. Using this procedure step, all submitted questions must be answered in the posting.

**B. Protest of Awarded Contracts (see FMp 2.140 *Procedure for Protest of Contract Award*)**

**C. Preparing the Contract**

1. The Contract Agent will prepare the contract using the appropriate MBPE contract template, maintained by MNPS Purchasing and pre-approved by the Metropolitan Attorney, based on the type of goods and/or services required. In the case of an award from an ITB, the ITB itself (signed and notarized by the Bidder) becomes the contract document.
2. A unique contract number will be assigned and applied to the contract and all of its amendments, attachments, addendums, exhibits, etc.
3. The contract will contain the Contractor's legal name, address, and contact information, a description of the goods and/or services to be provided, the terms of compensation, the contract beginning and ending dates (Term), the Contractor performance evaluation criteria, and such other standard and special terms as are appropriate for the specific contract.
4. Generally, every MBPE contract must contain the following provisions. Any alteration or elimination of any of these terms must be approved by the Metropolitan Attorney assigned to MNPS.
  - i. Payments
    - a. All contracts for services to MNPS shall require that progress reports, detailing the work performance, vendor employees performing the work, dates, times, attendance rosters for MNPS employees involved, etc.(as applicable), to be submitted with each invoice.
    - b. Travel reimbursements provided by a contract shall be subject to the limits and rules set forth in FM 2.102 *Travel Policy*.
    - c. The contract must state a maximum total compensation amount that is not to be exceeded during the term of the contract.
  - ii. All contracts will contain provisions to terminate the contract on the grounds of (a) breach by the Contractor, (b) discontinuation of funding for the contract, or (c) convenience of MNPS.
  - iii. Force Majeure.
  - iv. Any modification of the contract must be executed by a written amendment signed by the contract signatories.
  - v. MNPS is not liable for any delivery of goods or services under the contract unless pre-authorized by a MNPS purchase order.
  - vi. Contractor's Warranty obligations for goods or services provided under the contract.
  - vii. Contractor's grant of license for MNPS to use any software provided under the contract.
  - viii. Contractor's liability to defend MNPS in the case of any Copyright, Trademark, Service Mark, or Patent Infringement by Contractor's products or services.
  - ix. Preservation and return of any MNPS property provided to Contractor under the contract, and MNPS' ownership rights for any products produced under the contract.
  - x. No implication by the contract of a Partnership or Joint Venture relationship between MNPS and the Contractor.
  - xi. MNPS' agreement required before any Assignment of the contract.
  - xii. School District Statutory Immunity
  - xiii. No taxes to be charged to MNPS or included in the contract pricing.

- xiv. Contractor's Indemnification of MNPS and MNPS' disclaimer of Indemnification under state statute.
- xv. Contractor's liability for MNPS' attorney fees in the case of legal action where MNPS prevails.
- xvi. No contingent fees.
- xvii. No Gratuities and Kickbacks.
- xviii. Confidentiality of Student records.
- xix. Requirement for non-discrimination in the Contractor's employment practices.
- xx. Requirement for compliance with the Americans with Disabilities Act
- xi. Requirement for the Contractor to retain records related to the contract for a period of five years from the date of the final payment, and make them available for audit by MNPS, the Metro Nashville government, the state and federal government, or the designees of the foregoing.
- xxii. Governing Law shall be the state of Tennessee, with Davidson County as the venue for legal filings.
- xxiii. Requirement for Contractor to comply with TCA 49-5-413 Criminal Background Checks, prior to permitting an employee to have contact with students or enter school grounds when students are present.
- xxiv. Requirement for a certificate of insurance, with coverage types and limits as specified by the Metropolitan Director of Insurance. The certificate must list MNPS or MBPE as the Certificate Holder and designate the same as an additional insured under the general liability policy.

5. The following provisions shall not be included in any contracts, unless approved by the Metropolitan Attorney assigned to MNPS.

- i. Provisions that require MNPS to pay taxes, late payment penalties or interest, finance charges, cancellation fees, liquidated damages, incidental or consequential damages, or punitive or exemplary damages.
- ii. Provisions requiring MNPS to make deposits or payments before goods are received or services are performed. Possible exceptions may be for subscriptions, computer software, computer software/hardware maintenance, leases, and other similar services.
- iii. Provisions requiring MNPS to purchase or obtain liability, property, or other insurance, or a performance bond. In certain cases (e.g. property insurance to cover leased items), it may be reasonable for MNPS to obtain insurance. In such cases, the Metropolitan Director of Insurance is to be consulted.
- iv. Provisions requiring MNPS to insure, guarantee, indemnify, or hold harmless any party from claims which may arise out of the contract.
- v. Provisions requiring MNPS to consent to binding arbitration by a third party for claims.
- vi. Any disclaimer by the Contractor of liability for incidental, special, exemplary, or consequential damages.
- vii. Any disclaimer by the Contractor of express or implied warranties of merchantability and fitness for a particular purpose.
- viii. Any limitation of liability that the Contractor may be subject to.
- ix. Delivery terms that pass the risk of loss, or title, to MNPS before delivery and/or installation of products, unless the Contractor or MNPS provides shipment protection in MNPS' interest.
- x. Right of the Contractor to enter MNPS premises without notice to remove equipment or product upon alleged default by MNPS.
- xi. Terms that award attorneys' fees or costs to the Contractor in the event of legal action against MNPS.
- xii. Any limitation on time within which the District may bring suit.
- xiii. Any provisions requiring confidentiality or nondisclosure that violate the Tennessee Open Records Act.

6. Contractors may insist on using their own contract format. In these cases, with assistance and approval

from the Metropolitan Attorney assigned to MNPS, the Contractor's form may be used if modified so as to include the required MBPE standard terms and exclude any disallowed terms (see FM 2.113 Contracts), and then executed as a MBPE contract.

7. If any portion of the contract funding is to be from Federal funding sources, an approved and signed Federal Funds Spending Plan must be completed by the contract requestor, and a copy should be kept with the contract documentation.
8. All contracts that will exceed \$100,000 in total compensation, and any contract Amendments that individually or cumulatively increase the total compensation of the contract above \$100,000, must be approved by the Board of Education at a scheduled business meeting. Any amendment that increases the total compensation of a Board-approved contract must also be approved by the Board. All Grant contracts must be approved by the Board of Education. All contracts to be presented to the Board of Education for approval are first to be approved by the MNPS Senior Leadership Team.
9. Obtain from the contractor a Certificate of Insurance (COI) meeting the insurance requirements stated in the contract template. In the case of Grant Contracts, the grantor is not required to supply a COI. Address any questions regarding a specific contract's insurance coverage to the Metropolitan Director of Insurance.
10. Prepare the Contract Financial Summary Sheet (maintained by the Purchasing Department) to accompany the final contract draft and COI for signatures.

**D. Contract Execution (signing)**

1. The following documents (as applicable) are to be assembled by the Contract Agent and collectively submitted with the contract for contract signing.
  - i. Financial Summary sheet (maintained by MNPS Purchasing)
  - ii. Certificate of Insurance
  - iii. RFP or ITB from which the contract is awarded, including all Amendments and Attachment issued to the RFP/ITB
  - iv. Contractor's Proposal/Bid submitted in response to the RFP/ITB, including any supplemental submissions that were requested by MNPS
  - v. All Attachments, Addendums, Exhibits, etc. that are incorporated into the contract by reference
2. The contract is sent to the Contractor for signature before routing for MNPS and Metropolitan Government signatures. In some cases (Grant Contracts, Facilities Use Contracts, etc.), the Contractor may insist that the MNPS Board sign the contract before the Contractor. If that cannot be avoided, proceed with obtaining MNPS signatures (through the Board Chair) and then send the contract to the Contractor for signature, after which the original contract must be returned to MNPS to complete the signature routing through the Metropolitan Government and filing by the Metropolitan Clerk.
3. Contract execution requires the following signatures (or initials, as indicated below) on the contract, applied either manually or electronically.
  - i. Contractor
  - ii. For MNPS & MBPE:
    - a. Principal/Department Head requesting the contract (signature or initials)
    - b. Director of Purchasing
    - c. Federal Programs Financial Analyst – initials only (if the contract will expend federal funds)
    - d. Executive Director of Federal Programs (if the contract will expend federal funds)
    - e. Staff Officer who will have primary operational oversight of the Contractor
    - f. Director of Budgeting and Accounting (initials only)
    - g. Chief Financial Officer
    - h. MBPE Chair
  - iii. For the Metropolitan Government:

- a. OMB Clerk – initials only
- b. OMB Supervisor – initials only
- c. Director of Finance
- d. Director of Insurance
- e. Attorney
- f. Metropolitan Clerk (signs and files the completed contract)

1. When all required signatures are obtained, the Metropolitan Clerk signs and date stamps the contract, which is then considered executed and in force. A scanned copy of the executed contract is filed by the Metropolitan Clerk and sent to MNPS Purchasing.
2. Upon filing, the MNPS Contract Agent responsible for the contract will send a copy of the fully executed contract to the contract requestor and the Contractor.

**Performance Measure/Accountability**

- Continuous evaluation of procedure to ensure efficiency and compliance with all regulations



All Metropolitan Nashville Public Schools (MNPS) employees are required to abide by all federal, state and local government laws. MNPS employees must also maintain the highest level of honesty, integrity, and impartiality in their conduct as it relates to ethics, conflicts of interests and the acceptance of gifts. This ensures that all actions of, and work performed by, MNPS employees are transparent and ensures any actual or perceived misconduct or conflict of interest will be avoided. Although certain behavior may not break any particular law or may not be in violation of any strict interpretation of the law, certain behavior is not acceptable by MNPS.

### **Persons Covered**

This policy applies to all MNPS employees. All MNPS employees, officers and agents must comply with the standards described herein and in any other additional MNPS documents pertaining to conflicts of interest and ethics.

### **Employee Responsibilities:**

MNPS employees must avoid any action, whether or not specifically prohibited by this policy or departmental code of ethics, which might result in or create the appearance of:

- Using their position in MNPS for private gain;
- Providing preferential treatment to any person or business entity;
- Discriminating against any person or business entity;
- A lack of sobriety or placing one's self in a compromising or unseemly situation;
- Losing the ability to make decisions that are independent and impartial;
- Making a decision that does not follow approved guidelines and that is not in the best interest of MNPS;
- Affecting adversely the confidence of the public in the integrity of MNPS; and/or
- Reducing the operational efficiencies or economies of MNPS.

**Date Updated**  
June 2015

**Revision History**  
November 2010

**Review**  
Bi-Annually

**Date Last Reviewed**  
June 2015

## **Ethics, Conflicts of Interest and Acceptance of Gifts HC 5.110**

Each employee is responsible for the maintenance, integrity and accuracy of MNPS documents and records in order to comply with all regulatory and legal requirements and also to ensure records are available to support MNPS business practices and actions.

### **Questions on Interpretation of this Policy**

When an MNPS employee is in doubt as to the proper interpretation of this policy, he or she is expected to consult and seek the advice of his or her supervisor and/or the MNPS Director of Purchasing.

### **Responsibilities of the Supervisor**

Each MNPS employee who acts in a supervisory capacity is responsible for ensuring compliance with this policy by those employees in his or her line of authority. Should such a supervisory MNPS employee become aware of a potential or real violation of this Policy by an employee outside of his or her line of authority, that supervisory employee must report and disclose the real or potential violation to the MNPS Director of Purchasing.

### **Consequences of Policy Violation**

Any MNPS employee who violates the provisions of this Policy is subject to:

- Disciplinary action, up to and including termination from employment under the processes defined in the MNPS Support Employee Handbook (for Support Employees) and in T.C.A. § 49-5-511 (for Certificated Employees);
- Personal liability to MNPS; and
- Referral to appropriate law enforcement authorities if criminal actions are involved or suspected of being involved.

### **Conflicts of Interest**

MNPS prohibits any employee, officer or agent of MNPS to participate in the selection, award or administration of a purchase or contract if a conflict of interest, real or apparent, would be involved. According to Education Department General Administrative Regulations (EDGAR) at 2 C.F.R. 200.318(c)(1), no employee, officer or agent of MNPS shall participate in selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. No MNPS employee shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements. Such a conflict of interest arises when:

- The employee, officer or agent,
- Any member of his/her immediate family,
- His/her partner, or

## Ethics, Conflicts of Interest and Acceptance of Gifts HC 5.110

- An organization which employs or is about to employ any of the above parties, has a financial or other interest in or other tangible personal benefit from a firm considered or selected for the award or contract.

Any MNPS employee, officer or agent responsible for reviewing and evaluating applications, proposals or other documents related to awarding funds must promptly disclose any conflict of interest to the MNPS Director of Purchasing, who will review the disclosed potential conflict of interest and take any action(s) deemed appropriate or required to address, manage or resolve the matter. If the MNPS Director of Purchasing is involved in the reported conflict, the individual reporting the potential conflict should disclose it to the MNPS Chief Financial Officer. If appropriate, these disclosures and conflicts will be reported to the Metropolitan Attorney assigned to MNPS, who may determine whether additional actions or sanctions should be recommended or implemented.

Under certain circumstances, it may be necessary for an individual to recuse himself or herself from participating in any actions related to a purchase or contract award where a conflict may exist. After disclosing a possible conflict of interest, the MNPS Director of Purchasing will make a decision about the circumstances surrounding the potential conflict and may approve or waive it. Upon the decision by the MNPS Director of Purchasing, or if the individual(s) involved believe(s) it is appropriate or necessary, the MNPS employee, officer or agent should immediately recuse himself or herself from participating in the award and may not be privy to any nonpublic information relating to the award. The recusal of any individual must be documented in the official files maintained for the award.

Any circumstances or situations that present an actual conflict of interest, or the appearance of a conflict of interest, must be brought to the immediate attention of the employee's supervisor for investigation and appropriate action. Personnel responsible for reviewing and evaluating applications, proposals, or other documents related to awarding funds will be trained on this conflict of interest policy, including what a conflict of interest is and when it may arise. Upon understanding MNPS conflicts policy, appropriate staff must sign a certification that sets forth the standards for determining whether a conflict of interest exists. MNPS will maintain this certification and provide it to the appropriate personnel to assist with identifying and resolving any potential conflicts of interest. *A copy of the certificate can be found at the end of this policy.*

### **Gifts**

No MNPS employee, officer or agent shall solicit or accept, directly or indirectly, on behalf of himself, herself, or any member of the employee, officer or agent's household or parties listed above, any gift, gratuity, preferential discounts, service, favor, lavish entertainment or meals, lodging, long distance transportation, loan, loan guarantee, or anything of monetary value from any contractors, subcontractors, potential contractors, or parties to purchases, agreements, or awards. MNPS will not award contracts to independent contractors who have solicited contracts by means of offering gratuities,

## Ethics, Conflicts of Interest and Acceptance of Gifts HC 5.110

favors or anything of monetary value to the MNPS employee, officer or agent responsible for awarding contracts.

Any gift that is given by one MNPS employee, officer or agent to another MNPS employee, officer or agent that provides for personal financial gain or favor is not acceptable. These disallowed gifts shall not be accepted by the receiver. If a gift is accepted inadvertently or in error, the item must be returned to the giver/supplier or donated to a charity in the name of the giver/supplier. **If any MNPS employee receives a gift or favor, he/she must report the gift or favor in writing within 7 days to his/her supervisor.**

Offers from non-MNPS individuals or entities shall be referred to the MNPS Director of Purchasing. Offers from individuals or entities to donate furniture, equipment, supplies, etc. shall be referred to the MNPS Inventory Control Manager. Donations shall not be accepted if they are given to influence, or appear to have the possibility of influencing, a decision that provides monetary or other gains to the donor or the person accepting the donation.

MNPS recognizes situations may occur in which the financial interest of a gratuity, favor or gift is not substantial or is an unsolicited item of nominal value. The prohibition on soliciting or accepting gifts, entertainment, favors or gratuities of nominal value does not apply to:

- Loans from established financial institutions made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral given by any person described in this section;
- Unsolicited advertising materials of nominal value, including items considered “giveaways” at professional conferences, such as pens, pads, etc.;
- Meals not considered lavish (e.g. appetizer + entrée + sides + dessert = less than \$35) related to or linked with business dealings;
- Food and refreshments of nominal value when they are part of the employee’s participation in a charitable, civic, political or community event, which bears a relationship to the employee’s office and the employee is attending in an official capacity.
- Admission to charitable, civic, political, or other public events.
- Refreshments or meals of nominal value provided at business meetings.
- Any employee who travels on business for MNPS may keep the points or travel awards earned as a result of the MNPS supported business travel.
- Transportation and/or lodging provided by a vendor when attending a public event. Any lodging or long-distance transportation provided by a vendor and not by MNPS must be pre-approved by the Director of Schools in writing and must be for the purpose of furthering the mission of MNPS. This practice is highly discouraged as it is difficult, if not impossible, to avoid creating the impression of a conflict of interest. Prior to accepting such an offer, the employee should consult with the MNPS Director or Purchasing for advisability.

## **Ethics, Conflicts of Interest and Acceptance of Gifts** **HC 5.110**

MNPS employees must always be aware that meetings outside of MNPS, in both public venues and private venues, with companies and organizations that do business with MNPS, may raise questions as to the true purpose of the meeting, regardless of who actually pays for the employee's meal, ticket, attendance fee, or other item related to the meeting.

### **Financial Interests**

No MNPS employee shall enter into or derive a benefit, directly or indirectly, from any contractual arrangement with MNPS or any of its agencies or vendors. In recognition of the fact that many husbands and wives have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with MNPS shall not be considered a "benefit" to the MNPS employee, provided the conflict of interest was properly disclosed by the MNPS employee(s) involved, proper recusal procedures were followed and the contract with MNPS was procured with open competition pursuant to procurement requirements and without any participation, assistance, or influence from the MNPS employee.

No MNPS employee shall request or demand that any other person or entity make or offer to make any monetary contribution or other type of contribution of value to any campaign or to any political campaign committee in exchange for, or as a condition to, receiving some benefit from MNPS or any department, agency or official thereof, to the person or entity whose contribution is requested or demanded, or to the person making the request.

Any MNPS employee having stock or ownership interest in public or privately held companies that do business, or may potentially do business, with MNPS must report this relationship to his/her supervisor. If the employee is involved in the MNPS decision making process for the award of purchases or contracts, the employee must properly disclose the relationship to the MNPS Director of Purchasing and may be recused from award process.

### **Use of Information**

No MNPS employee shall directly or indirectly:

- Use, disclose, or allow the use of official information which was obtained through or in connection with his or her employment, and which has not been made available to the general public, for the purpose of furthering the private interest or personal profit of any person, including the employee, or
- Engage in a financial transaction as a result of, or primarily relying upon information obtained through his or her MNPS employment.

### **Use of Government Property**

No MNPS employee shall use the facilities, equipment, personnel or supplies of MNPS or its agencies other than for officially approved MNPS related activities, except to the extent that they are lawfully available to the general public.

## **Ethics, Conflicts of Interest and Acceptance of Gifts HC 5.110**

### **Other Ethical Responsibilities**

Individuals who prepare, approve, sign or submit E-rate applications, technology plans or other forms related to the E-rate program are subject to the requirements contained herein in addition to more stringent ethical requirements. For more information, see Federal Communications Commission Regulations located at 47 C.F.R. § 54.503. Any questions about this policy, including advice for addressing or handling potential conflict of interest issues may contact the MNPS Director of Purchasing at (615) 259-8533.

### **References and Authority**

Metropolitan Nashville Code of Laws, Chapter 2.222 Standards of Conduct  
Federal Communications Commission Regulations, 47 C.F.R. § 54.503  
FM 2.111 Purchasing Policy MNPS (MNPS Policy)  
FM 2.113 Initiating Contracts (MNPS Policy)  
MNPS Employee Handbook  
T.C.A. § 49-5-511  
T.C.A. § 49-2-301  
T.C.A. § 49-5-1001  
2 CFR § 200.318(c)(1)

**Ethics, Conflicts of Interest and Acceptance of Gifts**  
**HC 5.110**

The following Conflict of Interest Statement must be signed by any MNPS employee, officer or agent responsible for awarding contracts or purchases within MNPS. The Statement must be signed by each such person prior to the time of involvement in an award. The statement will be effective for one year from the date of signing and need not be re-signed for additional award involvement prior to the anniversary of signing.

**Conflict of Interest Statement for Awarding Contracts**

By signing below, I affirm that I have no conflict of interest, real or apparent, that might affect my objectivity and impartiality in preparing, submitting, approving, evaluating or administering any non-competed contract, purchase, proposal or application, or in evaluating, awarding or administering any competitive contract or purchase to provide goods and/or services to Metropolitan Nashville Public Schools (MNPS). I also affirm that I have neither solicited nor accepted any gratuities, favors or anything of monetary value from vendors/contractors, potential vendors/contractors or subcontractors who are or may do business with MNPS. I also affirm that I have read MNPS' Code of Conduct for Awarding Contracts (contained in FM 2-113 Contracts Policy) and agree to abide by the provisions contained therein. In addition, I have received training on MNPS Policy HC 5.110 *Ethics, Conflicts of Interest and Acceptance of Gifts* and agree to adhere to its procedures, including reporting, disclosure and recusal.

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Signature

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Date

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Printed Name